UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

Jose Trinidad Aguilar Martinez,

Petitioner,

v.

Brian ACUNA, Field Office Director of Enforcement and Removal Operations, New Orleans Field Office, Immigration and Customs Enforcement; Todd LYONS, Acting Director, U.S. Immigration & Customs Enforcement; Kristi NOEM, Secretary, U.S. Department of Homeland Security; Pamela BONDI, Attorney General, *in their official capacities,*

Respondents.

Case No. ~~1:25-cv-~~ 5:25-cv-124-DCB-RPM

PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

PETITION FOR A WRIT OF HABEAS CORPUS

PURSUANT TO 28 U.S.C. § 2241

1. Petitioner, Jose Trinidad Aguilar Martinez, A#[redacted], brings this petition for a writ of habeas corpus under 28 U.S.C. § 2241 to challenge his unlawful detention by the U.S. Department of Homeland Security ("DHS") and its subordinate agencies.
2. Petitioner is in the physical custody and direct control of Respondents and their agents. He is detained without bond at the Adams County Correctional Center in Mississippi.
3. Petitioner challenges his detention as a violation of both the Immigration and Nationality

Act ("INA") and the Fifth Amendment's Due Process Clause. He seeks judicial intervention to secure his release or, at minimum, to obtain a constitutionally required bond hearing.

4. Petitioner is entitled to a Writ of Habeas Corpus ordering Respondents to release him from custody under reasonable conditions of supervision.

5. Petitioner has resided continuously in the United States since 1998. On October 7, 2025, agents of DHS arrested Petitioner during a standard check-in with ICE in Chicago, Illinois.

6. Petitioner filed an application for Cancellation of Removal for Certain Non Permanent Residents well over a decade ago, after he was placed in removal proceedings in 2010. His individual hearing was rescheduled by the court a number of times, and his case was finally reset for a master calendar hearing in January 2026.

7. On July 8, 2025, DHS issued a new internal directive instructing Immigration and Customs Enforcement ("ICE") officers to treat all noncitizens inadmissible under § 1182(a)(6)(A)(i)—those who entered without inspection—as "applicants for admission" under § 1225(b)(2)(A) and therefore subject to mandatory detention. Relying on this new and unlawful policy, DHS has refused to consider Petitioner for release.

8. This interpretation directly contravenes the plain text and structure of the INA. Petitioner entered the United States in 1998 and has lived here for 40 years. He was not placed in removal proceedings until well over a decade after entry. Section 1225(b)(2) applies only to individuals stopped at the border or its functional equivalent—not to those apprehended years later within the nation's interior. Interior arrests such as Petitioner's fall under § 1226(a), which provides for discretionary detention and authorizes release on

bond or parole pending removal proceedings.

9. Respondents' newly minted reading of the statute is inconsistent with Congressional intent, decades of settled agency practice, and decisions of federal courts across the country, all of which have applied § 1226(a) to individuals in Petitioner's position. Detaining Petitioner without affording him a bond redetermination hearing to assess flight risk or danger to the community violates both the INA and the Due Process Clause of the Fifth Amendment.

10. Accordingly, Petitioner seeks a writ of habeas corpus compelling his immediate release from custody or, at minimum, an order requiring Respondents to provide a prompt bond hearing under 8 U.S.C. § 1226(a).

JURISDICTION AND VENUE

11. Jurisdiction is proper under 28 U.S.C. §§ 1331, 2241(c)(5), and the Suspension Clause, U.S. Const. art. I, § 9, cl. 2.

12. Pursuant to 28 U.S.C. § 2241, district courts have jurisdiction to hear habeas petitions by noncitizens who challenge the lawfulness of their detention under federal law. *Demore v. Kim*, 538 U.S. 510, 516–17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

13. Venue properly lies in the United States District Court for the Southern District of Mississippi under *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493–500 (1973), because Petitioner is detained within this judicial district.

14. A district court may grant a writ of habeas corpus if a petitioner is in federal custody in violation of the Constitution or federal law. 28 U.S.C. § 2241. Historically, "the writ of habeas corpus has served as a means of reviewing the legality of Executive detention, and it is in that context that its protections have been strongest." *I.N.S. v. St. Cyr*, 533 U.S.

289, 301, 121 S. Ct. 2271, 150 L. Ed. 2d 347 (2001). Accordingly, a district court's habeas jurisdiction includes challenges to immigration-related detention. *Zadvydas*, 533 U.S. at 687.

15. The Court may grant the relief requested under 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.

PARTIES

16. Petitioner, Jose Trinidad Aguilar Martinez, is a 40 year-old Mexican national who has resided in the United States since his entry in 1998. On October 7, 2025, Petitioner was arrested by officers of U.S. Immigration and Customs Enforcement ("ICE") during a standard check-in with ICE in Chicago, Illinois, and was subsequently transferred to the Adams County Correctional Center in Mississippi where he remains detained.

17. Respondent Brian Acuna is the Acting Director of the New Orleans Field Office of ICE's Enforcement and Removal Operations ("ERO") which also covers ICE operations in Mississippi. As the official directly responsible for the custody and detention of noncitizens within this jurisdiction, Mr. Acuna is Petitioner's immediate custodian and is therefore a proper respondent to this habeas action. He is sued in his official capacity.

18. Respondent Todd Lyons is sued in his official capacity as Acting Director of ICE. In this role, he exercises supervisory authority over ICE's enforcement and detention operations nationwide and bears responsibility for the detention and removal of noncitizens, including Petitioner.

19. Respondent Kristi Noem, in her official capacity as Secretary of the U.S. Department of Homeland Security ("DHS"), is responsible for the overall administration and enforcement of the Immigration and Nationality Act ("INA"). She oversees ICE and has

ultimate legal custody authority over Petitioner's detention.

20. Respondent Department of Homeland Security ("DHS") is the federal agency charged with implementing and enforcing the INA, including the arrest, detention, and removal of noncitizens within the United States.

21. Respondent Pamela Bondi is the Attorney General of the United States and the head of the U.S. Department of Justice ("DOJ"). She oversees the Executive Office for Immigration Review ("EOIR"), which conducts removal proceedings and bond hearings under the INA. She is sued in her official capacity.

22. Respondent Executive Office for Immigration Review ("EOIR") is a component agency of the DOJ responsible for adjudicating removal proceedings and custody redeterminations in bond hearings under the INA.

STATEMENT OF FACTS

23. Petitioner, Jose Trinidad Aguilar Martinez, entered the United States from Mexico in 1998, at the age of 14 and has never departed.

24. Petitioner resides in Hanover Park, Illinois, with his wife and three children who rely on him for daily care, stability, and financial support.

25. Petitioner is employed with [redacted] He is the primary financial supporter for his household and his family relies on him to provide for them and take care of them.

26. Petitioner was placed in removal proceedings in 2010 during a traffic stop. He was released on bond after which he filed an application for Cancellation of Removal for Certain Non Permanent Residents.

27. Despite filing this application well over a decade ago, Petitioner's case has not yet been heard by the Court. The case was first scheduled for individual hearing in 2015,

postponed to November 2019, then cancelled without scheduling of a new hearing date.

28. Petitioner, eagerly seeking to have his case heard, filed a motion to recalendar and the case was reset for a master calendar hearing to take place in January 2026.

29. Petitioner has no criminal record nor is he a flight risk. He has consistently and regularly attended his check-in appointments since 2011, without issue.

30. However, during a standard check-in appointment on October 7, 2025, officers from U.S. Immigration and Customs Enforcement ("ICE"), operating under the supervision of Respondent Brian Acuna, arrested Petitioner. Petitioner was immediately transferred to the ICE Processing Center in Broadview, Illinois, then moved to Adams County Correctional Center in Mississippi where he remains detained as of the filing of this Petition.

31. Petitioner has advised undersigned counsel that he wishes to be released from custody on his own recognizance or on bond. However, Respondents have informed him that he will remain detained without an opportunity for release.

32. Petitioner maintains his intention to seek Cancellation of Removal for Certain Nonpermanent Residents pursuant to INA § 240A(b), based on his longstanding residence in the United States, good moral character, and the exceptional and extremely unusual hardship his family would suffer if he were removed.

33. Petitioner is scheduled for a hearing on his request for Cancellation of Removal in January 2026. Because Petitioner has not yet been heard by the court on this application, despite having filed it over a decade ago, Petitioner has not been given any final order or decision. Therefore, he has most certainly not been given a final order of removal.

34. Petitioner has deep and longstanding ties with his community. He resides with his wife

and three children, 20 year old son, Jayz; 19 year old son, David; and 15 year old daughter, Giselle in Hanover Park, IL. He has been gainfully employed since entering the U.S. over 25 years ago and enjoys strong relationships with U.S. citizen relatives, neighbors, and community members who attest to his integrity and good character.

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

36. Pursuant to Respondents' new detention policy, Petitioner remains in mandatory custody without access to a bond hearing. Absent intervention from this Court, he faces the prospect of months or even years in detention, separated from his family and community, without any individualized determination of necessity, in violation of the INA and the Due Process Clause of the Fifth Amendment.

EXHAUSTION OF REMEDIES

37. No statutory requirement of administrative exhaustion applies to Petitioner's claims. The Immigration and Nationality Act ("INA") imposes no exhaustion requirement for habeas petitions brought under 28 U.S.C. § 2241, and the judicially created rule requiring exhaustion of available administrative remedies does not apply where no such remedies exist. See *McCarthy v. Madigan*, 503 U.S. 140, 144–45 (1992), superseded by statute on other grounds as recognized in *Woodford v. Ngo*, 548 U.S. 81 (2006).

38. Here, there are no administrative remedies available to Petitioner. DHS has taken the

position that noncitizens who entered without inspection are subject to mandatory detention under 8 U.S.C. § 1225(b)(2), and the Executive Office for Immigration Review ("EOIR") has formally adopted that view. In its published decision, the Board of Immigration Appeals ("BIA") held that "Immigration Judges lack authority to hear bond requests or to grant bond to [noncitizens] who are present in the United States without admission." *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Under that interpretation, Petitioner is categorically ineligible for bond, rendering administrative review unavailable.

39. Multiple courts have recognized that exhaustion would be futile under these circumstances because the government's position on § 1225(b)(2) is fixed and consistently applied at every level of DHS and EOIR. See *Singh v. Lewis*, No. 4:25-CV-96-RGJ, 2025 WL 2699219, at *3 (W.D. Ky. Sept. 22, 2025) ("The United States has made clear their position on Section 1225, and it is being applied at all levels within the DHS. Therefore, it is unlikely that any administrative review would lead to the United States changing its position and precluding judicial review."); *Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, 2025 WL 2496379, at *4 (E.D. Mich. Aug. 29, 2025) ("Because exhaustion would be futile and unable to provide [Petitioner] with the relief he requests in a timely manner, the Court waives administrative exhaustion and will address the merits of the habeas petition.").

40. Moreover, neither immigration judges nor the BIA have jurisdiction to adjudicate constitutional claims, including due process challenges to immigration detention. See *Matter of R-A-V-P-*, 27 I. & N. Dec. 803, 804 n.2 (B.I.A. 2020) (holding that IJs and the BIA lack authority to consider the constitutionality of the statutes or regulations they

administer); *Matter of C–*, 20 I. & N. Dec. 529, 532 (B.I.A. 1992) (same). The Seventh Circuit has likewise recognized that "the BIA has no jurisdiction to adjudicate constitutional issues." *Gonzalez v. O'Connell*, 355 F.3d 1010, 1017 (7th Cir. 2004).

41. Because Petitioner has no available or effective administrative remedies and because the agencies lack authority to resolve his constitutional and statutory claims, exhaustion is not required and would, in any event, be futile. This Court may therefore properly exercise jurisdiction under 28 U.S.C. § 2241 to consider Petitioner's claims on the merits.

LEGAL FRAMEWORK

1. Overview of Immigration Detention Authority

42. The Immigration and Nationality Act ("INA") establishes three primary detention frameworks governing noncitizens at different stages of the immigration process. Each framework carries distinct statutory predicates, procedural protections, and constitutional implications. This case concerns the government's misapplication of these provisions—specifically, its unlawful effort to extend mandatory detention under 8 U.S.C. § 1225(b)(2) to individuals who have long resided in the United States and were apprehended far from any border or port of entry.

43. First, 8 U.S.C. § 1226 governs the arrest and detention of noncitizens already present in the United States pending the outcome of removal proceedings. As the Supreme Court explained, "Section 1226(a) sets out the default rule: The Attorney General may issue a warrant for the arrest and detention of a noncitizen 'pending a decision on whether the [noncitizen] is to be removed from the United States.'" *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018) (quoting § 1226(a)). Detention under this provision is discretionary, and the INA expressly authorizes release on bond or conditional parole. See 8 U.S.C. §

1226(a)(2); 8 C.F.R. §§ 1003.19(a), 1236.1(c)(8), (d)(1).

44. Second, a narrow subset of individuals—those who have committed certain enumerated criminal or terrorist offenses—are subject to mandatory detention under § 1226(c). *Jennings*, 583 U.S. at 289. Congress's decision to specify these categories confirms that, absent such exceptions, § 1226(a)'s discretionary framework applies to all other noncitizens encountered in the interior.

45. Third, 8 U.S.C. § 1225(b) governs the inspection and detention of noncitizens seeking entry at the Nation's borders or ports of entry. This scheme applies to "arriving" or "recently arrived" individuals undergoing inspection to determine admissibility. *Id.* at 287. Noncitizens detained under § 1225(b) may not be released except for "urgent humanitarian reasons or significant public benefit" under 8 U.S.C. § 1182(d)(5)(A).

46. Finally, 8 U.S.C. § 1231 governs detention after a final order of removal has been entered. That provision is not implicated here.

47. Petitioner falls squarely within § 1226(a)'s framework: he was apprehended years after entering the United States and is currently detained pending action on his Application for Cancellation of Removal. Nonetheless, Respondents have invoked § 1225(b)(2)—a border-control provision—to justify denying him bond and categorizing him as subject to mandatory detention. This overreach forms the basis of the statutory and constitutional violations challenged in this Petition.

2. Respondents' Expansion of Mandatory Detention

48. In recent months, Respondents have taken unprecedented steps to expand the scope of mandatory detention under 8 U.S.C. § 1225(b)(2) far beyond its text and historical application. Their new policy seeks to transform a border-management provision into a

tool for indefinite, no-bond detention of long-term residents apprehended inside the United States.

49. On July 8, 2025, U.S. Immigration and Customs Enforcement ("ICE"), acting *in coordination with the Department of Justice ("DOJ")*, issued a policy memorandum titled *"Interim Guidance Regarding Detention Authority for Applicants for Admission"*. See U.S. Immigration & Customs Enforcement, *Interim Guidance Regarding Detention Authority for Applicants for Admission* (July 8, 2025), available at https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission. This memorandum directs all ICE officers to treat every noncitizen inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i)—those who entered the United States without inspection—as an "applicant for admission" under § 1225(b)(2)(A) and therefore subject to mandatory detention.

50. The July 8 memorandum marks a dramatic and unlawful shift from decades of settled agency practice. For nearly thirty years, DHS and its predecessor agencies have uniformly applied § 1226(a), not § 1225(b)(2), to individuals apprehended in the interior who entered without inspection. The new policy reverses that framework without statutory authorization, notice-and-comment rulemaking, or reasoned explanation.

51. Under this new regime, ICE officers are instructed to deny release on bond or parole to anyone deemed an "applicant for admission," regardless of how long they have lived in the United States, their family and community ties, or their lack of criminal history. The policy thus categorically forecloses individualized custody determinations, effectively presuming detention for entire classes of people never intended by Congress to be treated as arriving noncitizens.

52. On September 5, 2025, the Board of Immigration Appeals ("BIA") entrenched this erroneous approach in a published decision, *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). The BIA held that all individuals who entered the United States without admission or parole are to be regarded as "applicants for admission" and therefore ineligible for immigration-judge bond hearings. This decision formalized the July 8 policy and extended its reach nationwide.

53. Together, the July 8 ICE memorandum and the September 5 BIA decision represent a coordinated and unlawful effort to expand the government's detention powers far beyond statutory limits. They disregard the clear line Congress drew between (1) arriving noncitizens at the border, who may be detained under § 1225(b), and (2) noncitizens already present in the United States, who fall under § 1226(a) and are entitled to a bond hearing.

54. Respondents now rely on these two instruments to justify Petitioner's detention without bond at the Adams County Correctional Center. Their actions directly contravene the plain language of the INA, the longstanding practice of DHS and EOIR, and the decisions of federal courts across the country—including within this Circuit—that have repeatedly reaffirmed the limited reach of § 1225(b)(2).

3. Statutory Construction Demonstrates Respondents' Interpretation Is Wrong

i. Statutory Text

55. The plain text of 8 U.S.C. § 1225, its structure within the INA, and its consistent judicial interpretation all demonstrate that the term "applicant for admission" in § 1225(b)(2) does not encompass individuals apprehended years after entering the United States without inspection. Respondents' reading of the statute defies both linguistic and

contextual logic.

56. Section 1225 is titled: "Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing." (emphasis added). The repeated use of the term "arriving" makes clear that the provision governs those encountered at the threshold of entry, not those already residing within the country's interior. Courts interpreting this section have consistently recognized that "the added word of 'arriving' indicates that the statute governs arriving noncitizens, not those present already." *Beltran Barrera v. Tindall*, No. 3:25-CV-541-RGJ, 2025 WL 2690565, at *4 (W.D. Ky. Sept. 19, 2025)* (citing *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425, at *5 (E.D. Mich. Sept. 9, 2025)).

57. By contrast, § 1226—titled *"Apprehension and detention of aliens"*—covers individuals who are already in the United States. The juxtaposition between these two provisions reflects a deliberate statutory division: § 1225(b) applies to *arriving noncitizens*, while § 1226(a) applies to *noncitizens present within the country.*

58. The internal subheadings and structure of § 1225 confirm this limited scope. Subsection 1225(b)(2) bears the heading "Inspection of Other Aliens" and references specific categories of persons typically encountered at ports of entry—such as "crewmen" and "stowaways" in § 1225(b)(2)(B)—as well as those "arriving" in § 1225(b)(2)(C). The consistent use of terms tied to the entry process demonstrates that Congress intended this section to regulate inspection and detention at or near the border, not arrests made deep within the interior.

59. The ordinary meaning of the term "seeking admission" reinforces this conclusion. As multiple courts have explained, "the term 'seeking' implies action—something that is

currently occurring—and in this context, would most logically occur at the border upon inspection." *Lopez-Campos v. Hyde*, 2025 WL 2496379, at *6 (E.D. Mich. Aug. 29, 2025)*; *Beltran Barrera*, 2025 WL 2690565, at *4*. Noncitizens who entered the United States years ago, established families, and lived openly in their communities are not "seeking admission." They are *present*—and their detention is governed by § 1226(a).

60. Respondents' interpretation thus stretches the statutory text beyond recognition, collapsing Congress's carefully drawn distinction between border and interior enforcement. If Congress had intended § 1225(b)(2) to apply to anyone ever deemed "inadmissible," it would have said so explicitly. Its failure to do so—and its simultaneous enactment of § 1226(a) to govern interior arrests—makes clear that Respondents' interpretation is unsustainable.

ii. Statutory Framework

61. The broader statutory framework of the Immigration and Nationality Act ("INA") reinforces that § 1225(b)(2) applies exclusively to recently arrived noncitizens seeking admission at a border or port of entry, not to individuals like Petitioner who were apprehended long after entry while living in the interior of the United States.

62. The INA's detention scheme draws a clear line between noncitizens "seeking admission" and those "already in the country." The Supreme Court has long recognized this distinction, explaining that "§ 1225(b) governs detention of arriving aliens at the border, whereas § 1226 applies to aliens already present in the United States." *Jennings v. Rodriguez*, 583 U.S. 281, 288, 301 (2018). See also *Lopez Benitez v. Francis*, No. 25-CIV-5937 (DEH), 2025 WL 2371588, at *8 (S.D.N.Y. Aug. 13, 2025)* ("The line historically drawn between sections 1225 and 1226 … is that § 1225 governs noncitizens

'seeking admission into the country,' while § 1226 governs those 'already in the country.'") (cleaned up); *Martinez v. Hyde*, 2025 WL 2084238, at *8 (D. Mass. July 24, 2025) (same).

63. Under long-settled canons of statutory construction, statutes must be read to give effect to every provision and avoid rendering any clause superfluous. *Corley v. United States*, 556 U.S. 303, 314 (2009). The government's interpretation of § 1225(b)(2) violates this rule by collapsing the distinct functions of §§ 1225 and 1226 and nullifying the statutory balance Congress created between border and interior enforcement.

64. Congress expressly carved out limited categories of inadmissible noncitizens in § 1226(c)—those who have committed certain serious criminal or terrorist offenses—and subjected only those categories to mandatory detention. See 8 U.S.C. § 1226(c)(1)(A), (D), (E). This design proves that noncitizens deemed inadmissible but encountered inside the country ordinarily fall under § 1226(a)'s discretionary framework. If Congress had already intended § 1225(b)(2) to cover all inadmissible individuals, these carveouts in § 1226(c) would be meaningless—a result the Supreme Court forbids. See *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010) ("When Congress creates specific exceptions to a statute's applicability, it proves that, absent those exceptions, the statute generally applies.").

65. Congress reaffirmed this structure in 2025 through the enactment of the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025), which amended § 1226(c) to add new categories of noncitizens subject to mandatory detention. Specifically, the amendment covers those inadmissible under §§ 1182(a)(6)(A) (presence without admission or parole), 1182(a)(6)(C) (misrepresentation), or 1182(a)(7) (lack of valid documentation) who have

been arrested for, charged with, or convicted of certain crimes. See 8 U.S.C. § 1226(c)(1)(E). If, as Respondents claim, § 1225(b)(2) already imposed mandatory detention on all persons inadmissible under § 1182(a)(6)(A), this amendment would be entirely redundant. See *Beltran Barrera v. Tindall*, 2025 WL 2690565, at *4; Lopez-Campos v. Hyde*, 2025 WL 2496379, at *8.*

66. The statutory framework thus leaves no ambiguity: § 1226(a) governs detention of individuals apprehended within the United States, while § 1225(b)(2) applies only to those at or near a port of entry. Respondents' contrary reading not only disregards text and structure but also rewrites decades of statutory practice and interpretation.

iii. Congressional Intent and Historical Agency Practice

67. Congressional intent and the government's own historical practice confirm that § 1225(b)(2) was never designed to apply to individuals like Petitioner—those apprehended in the interior long after entry. From the INA's enactment through 2025, every branch of government understood § 1226(a) to govern the detention of noncitizens already present in the United States.

68. The current detention framework was codified by the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") of 1996, Pub. L. No. 104–208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–585. When Congress enacted the IIRIRA, it drew a deliberate distinction between arriving noncitizens, who are inspected at ports of entry under § 1225, and noncitizens already within the United States, who are subject to arrest and detention under § 1226. Nothing in the IIRIRA's text or legislative history suggests an intent to conflate these two categories.

69. Following the IIRIRA's passage, the Executive Office for Immigration Review ("EOIR")

promulgated regulations that explicitly reflected this distinction. In 1997, EOIR explained that, "in general, people who entered the country without inspection are not considered detained under Section 1225," but rather under § 1226(a) and thus eligible for bond hearings. See *Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures*, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

70. For nearly three decades thereafter, DHS and EOIR applied this framework consistently. Noncitizens who entered without inspection and were apprehended while residing in the interior were detained under § 1226(a) and routinely received bond hearings—unless disqualified by specific criminal or terrorism grounds under § 1226(c). This uniform practice extended across administrations of both political parties, grounded in statutory text, common sense, and constitutional principles of due process.

71. This longstanding interpretation also reflected the pre-IIRIRA regime, which recognized a clear right to custody review for individuals apprehended after entry. The former 8 U.S.C. § 1252(a) (1994) governed "arrest and detention" of noncitizens already in the United States and explicitly allowed for bond redetermination by an immigration judge. Congress's 1996 codification of § 1226(a) merely "restated" that preexisting authority. See H.R. Rep. No. 104-469, pt. 1, at 229 (1996).

72. Respondents' abrupt reversal of this decades-long statutory and regulatory interpretation in 2025—without public notice, rulemaking, or reasoned explanation—contradicts the clear legislative intent underlying the IIRIRA and the executive branch's own settled practice. It is a textbook example of administrative overreach inconsistent with the statutory scheme Congress enacted.

iv. Recent Federal Court Decisions Confirming Petitioner's Position

73. In the months following ICE's July 8, 2025 policy memorandum and the BIA's decision in *Matter of Yajure Hurtado*, federal courts across the country—including this one—have overwhelmingly rejected Respondents' interpretation of § 1225(b)(2). These courts have uniformly concluded that the provision applies only to recently arrived noncitizens at or near the border, not to individuals apprehended years after entering and residing within the United States.

74. For example, after immigration judges in Tacoma, Washington ceased providing bond hearings to noncitizens who entered without inspection, the U.S. District Court for the Western District of Washington held that such a reading of the INA was likely unlawful. The court concluded that § 1226(a)—not § 1225(b)—governs the detention of noncitizens apprehended in the interior. *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025).

75. Federal courts nationwide have since echoed this conclusion, striking down or declining to defer to Respondents' new policy and affirming that § 1226(a) remains the controlling provision for interior arrests. See, e.g., *Ochoa Ochoa v. Noem*, No. 1:25-cv-10865 (N.D. Ill. Oct. 16, 2025) (rejecting *Matter of Yajure Hurtado* as nonbinding and unpersuasive under *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 413 (2024)); *Gomes v. Hyde*, 2025 WL 1869299, at *8 (D. Mass. July 7, 2025)*; *Martinez v. Hyde*, 2025 WL 2084238, at *8 (D. Mass. July 24, 2025)*; *Lopez Benitez v. Francis*, 2025 WL 2371588, at *8 (S.D.N.Y. Aug. 13, 2025)*; *Garcia Jimenez v. Kramer*, No. 4:25-cv-03162-JFB-RCC, 2025 WL 2374223 (D. Neb. Aug. 14, 2025); *Aguilar Maldonado v. Olson*, No. 25-cv-3142

(SRN/SGE), 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW-DFM, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 (D. Neb. Aug. 19, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Lopez-Campos v. Hyde*, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Herrera Torralba v. Knight*, No. 2:25-cv-03166-RFB-DJA, 2025 WL 2581792 (D. Nev. Sept. 5, 2025).

76. These decisions consistently hold that § 1225(b)(2) governs the inspection and detention of *arriving noncitizens* at ports of entry, not those long settled within the country. Each court reaffirmed that noncitizens arrested within the United States—no matter how they entered—are detained under § 1226(a) and entitled to an individualized bond hearing before an immigration judge.

77. Even after the BIA's decision in *Matter of Yajure Hurtado*, courts have continued to reject its reasoning, finding it inconsistent with statutory text and undeserving of deference under *Loper Bright*. See, e.g., *Ochoa Ochoa v. Noem*, No. 1:25-cv-10865 (N.D. Ill. Oct. 16, 2025) (declining to defer under *Loper Bright*, given the BIA's conflicting interpretations over time); *Singh v. Lewis*, 2025 WL 2699219, at *3 (same); *Beltran Barrera v. Tindall*, 2025 WL 2690565, at *5 (W.D. Ky. Sept. 19, 2025); *Pizarro Reyes v. Raycraft*, 2025 WL 2609425, at *6–8 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, 2025 WL 2607924, at *8 n.11 (D. Mass. Sept. 9, 2025); *Aceros v. Kaiser*, No. 25-cv-06924-EMC, 2025 WL 2637503, at *9 (N.D. Cal. Sept. 12, 2025).

78. The sheer volume and consistency of these rulings leave no doubt: Respondents' new interpretation of § 1225(b)(2) is contrary to law. Courts have uniformly reaffirmed that

individuals like Petitioner—noncitizens apprehended years after entry within the interior—are governed by § 1226(a) and entitled to a bond hearing to determine whether continued detention is justified.

4. Petitioner's Detention Violates the INA

79. Petitioner's continued detention is unlawful because it is not authorized under any provision of the Immigration and Nationality Act ("INA"). As demonstrated above, § 1225(b)(2) applies only to noncitizens who are apprehended while "seeking admission" at a border or port of entry, and not to those who, like Petitioner, were arrested years after entering and living in the interior of the United States.

80. Petitioner entered the United States in 1998 and has lived here for 40 years, establishing deep family and community ties. He was arrested by ICE agents during a standard check-in in Illinois, far from any border or port of entry, nearly three decades after entry.

81. By applying § 1225(b)(2) to Petitioner, Respondents have misapplied a border detention statute to an individual clearly governed by § 1226(a). Section 1226(a) provides that the Attorney General "may" detain a noncitizen pending removal proceedings and "may release" the person on bond or conditional parole. 8 U.S.C. § 1226(a). The use of the discretionary term *"may"* reflects Congress's deliberate choice to authorize individualized custody determinations—not blanket mandatory detention.

82. Detention under § 1226(a) is therefore subject to an individualized bond hearing, at which an immigration judge determines whether continued detention is necessary based on risk of flight or danger to the community. See 8 C.F.R. §§ 1003.19(a), 1236.1(d)(1); *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239, 1247 (W.D. Wash. 2025) (individuals detained under § 1226(a) "are entitled to a bond hearing before an

immigration judge at any time before entry of a final removal order").

83. Respondents' failure to provide Petitioner such a hearing violates both the INA and longstanding regulatory practice. Nothing in the statute authorizes the government to detain noncitizens indefinitely without an individualized assessment of necessity. To the contrary, the statutory framework presumes release unless the government can meet its burden of showing that detention is warranted under § 1226(a).

84. Because Petitioner was apprehended within the United States, not at the border, and because his detention has never been justified by any individualized finding, Respondents lack statutory authority to continue detaining him under § 1225(b)(2). The government's actions are thus contrary to law and in violation of the INA.

85. Petitioner is entitled to immediate release from custody, or, at minimum, a prompt bond hearing under § 1226(a) at which the government bears the burden of proving that detention is necessary to prevent flight or danger to the community.

5. Petitioner's Detention Violates the Due Process Clause

86. The Fifth Amendment guarantees that no person shall "be deprived of life, liberty, or property, without due process of law." Noncitizens within the United States are entitled to that protection. See *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). To determine whether a particular civil-detention scheme violates due process, courts apply the three-part balancing test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976).

i. Private Interest

87. The first *Mathews* factor examines the magnitude of the private liberty interest at stake. The Supreme Court has described "the interest in being free from physical detention" as

"the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529–31 (2004). Petitioner's detention at Adam's County Correctional Center deprives him of that core freedom. He is separated from his family, unable to work or care for his dependents, and confined in a detention center thousands of miles from his home, where conditions are cramped and basic necessities are limited. Each additional day of confinement deepens the deprivation of liberty and dignity that due process protects.

ii. Risk of Erroneous Deprivation and Value of Additional Procedures

88. The second factor assesses "the risk of erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards." *Mathews*, 424 U.S. at 335. Here, that risk is acute. By categorically classifying Petitioner under § 1225(b)(2) and denying any bond hearing, Respondents have removed the individualized assessment Congress required under § 1226(a).

89. As shown above, the statutory text, framework, legislative history, and decades of agency practice establish that individuals like Petitioner are entitled to bond hearings. Yet under Respondents' new policy, there is no procedure whatsoever to evaluate whether detention is necessary. This all-or-nothing approach creates precisely the kind of arbitrary confinement the Due Process Clause forbids. See *Gunaydin v. Trump*, No. 25-CV-01151 (JMB/DLM), 2025 WL 1459154, at *8 (D. Minn. May 21, 2025) (recognizing heightened risk of erroneous deprivation where detainees are denied bond hearings).

90. Reasonable alternatives exist that would all but eliminate this risk. Under § 1226(a), immigration judges routinely hold bond redetermination hearings to evaluate flight risk and dangerousness—safeguards that balance the government's interest in enforcement with the individual's liberty interest. Providing Petitioner that process would ensure

accuracy and fairness without burdening the government.

iii. Government Interest

91. The third *Mathews* factor considers the government's interest in maintaining the challenged procedure, including the fiscal and administrative burdens of additional safeguards. Here, that interest is minimal. Respondents' current approach, detaining long-term residents under a border-control statute, advances no legitimate administrative purpose. It contradicts statutory text, decades of agency practice, and multiple federal-court decisions.

92. The government's legitimate interests in public safety and ensuring attendance at removal proceedings are already protected under § 1226(a)'s bond framework. Holding an individualized hearing imposes negligible cost compared to the profound liberty deprivation that continued detention inflicts. As numerous courts have recognized, the Due Process Clause demands no less. See *Singh v. Lewis*, 2025 WL 2699219, at *9 ("The risk of erroneously depriving [a detainee] of his freedom is high if the IJ fails to assess his risk of flight or dangerousness.").

iv. Conclusion Under Mathews

93. Balancing the *Mathews* factors, the equities are unmistakable. Petitioner's interest in freedom is paramount; the risk of erroneous deprivation under Respondents' categorical policy is grave; and the government's asserted interest is negligible. Accordingly, Petitioner's detention without a bond hearing violates the Due Process Clause of the Fifth Amendment, and this Court should order his immediate release or, at minimum, require a prompt individualized custody hearing consistent with constitutional and statutory mandates.

CLAIMS FOR RELIEF

COUNT ONE

Violation of The Immigration and Nationality Act – 8 U.S.C. § 1231

94. Petitioner incorporates by reference all allegations set forth in the preceding paragraphs as though fully stated herein.

95. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens present in the United States who are charged as inadmissible. By its text, structure, and history, § 1225(b)(2) applies only to individuals who are *seeking admission* at the border or a port of entry, not to those who, like Petitioner, entered the United States years ago and are now living in the interior.

96. Noncitizens who have entered and reside within the United States are detained, if at all, under 8 U.S.C. § 1226(a)—unless they fall within one of the narrow statutory exceptions at § 1225(b)(1), § 1226(c), or § 1231. Section 1226(a) authorizes the Attorney General to detain such individuals pending removal proceedings and to release them on bond or conditional parole after an individualized determination of risk.

97. Respondents' actions violate § 1226(a) and the INA's statutory scheme by categorically treating Petitioner as subject to mandatory detention under § 1225(b)(2). To date, Respondents have refused to provide Petitioner with a bond hearing or to consider his release on his own recognizance, despite making no individualized finding that he poses a danger to the community or a flight risk.

98. By applying § 1225(b)(2) to Petitioner, Respondents have exceeded their statutory authority, acted contrary to law, and violated the Immigration and Nationality Act.

Petitioner's continued detention without an individualized custody determination is therefore unlawful and must be remedied by this Court.

COUNT TWO

Violation of the Due Process Clause of the

Fifth Amendment to the U.S. Constitution

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

100. The Fifth Amendment to the United States Constitution provides that the government may not deprive any person of life, liberty, or property without due process of law. *U.S. Const. amend. V.* "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

101. Petitioner has a fundamental liberty interest in remaining free from physical restraint and arbitrary confinement. Detention by the government, even for civil purposes, constitutes a severe deprivation of liberty requiring rigorous procedural safeguards.

102. Petitioner entered the United States without inspection, had no contact with DHS officials upon entry, and lived continuously in the United States for over a decade prior to being placed in removal proceedings after a traffic stop in 2010 then released on bond.

103. Now, Petitioner is once again detained due to an arbitrary policy change, despite following all of the rules and attending every check-in appointment, this time without the option of a bond hearing. Individuals in this category, those apprehended long after entry and residing in the interior, are subject only to discretionary detention under 8 U.S.C. § 1226(a), which expressly provides for release on bond or conditional parole after an

individualized determination.

104. Respondents' decision to detain Petitioner under the mandatory detention provision of § 1225(b)(2), without affording him a bond redetermination hearing or any individualized assessment of flight risk or danger, violates the Due Process Clause of the Fifth Amendment. Such detention is arbitrary, punitive, and contrary to both statutory and constitutional guarantees.

105. Petitioner therefore seeks an order declaring his continued detention unlawful and directing Respondents to immediately release him or, at minimum, to provide a prompt bond hearing before an immigration judge at which the government must demonstrate, by clear and convincing evidence, that continued detention is necessary.

PRAYER FOR RELIEF

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

a. Assume jurisdiction over this matter pursuant to 28 U.S.C. § 2241 and all other applicable authorities;

b. Issue a Writ of Habeas Corpus requiring Respondents to immediately release Petitioner from custody, or, in the alternative, to provide Petitioner with a prompt bond hearing pursuant to 8 U.S.C. § 1226(a)—to be held within Seven (7) days of the Court's order—at which the government must demonstrate, by clear and convincing evidence, that continued detention is necessary to prevent flight;

c. Declare that Petitioner's continued detention violates the Immigration and Nationality Act and the Due Process Clause of the Fifth Amendment to the United States Constitution;

d. Award attorneys' fees and costs under the Equal Access to Justice Act ("EAJA"), 28

U.S.C. § 2412, and any other authority providing for such an award; and

e. Grant such other and further relief as this Court deems just and proper.

Dated: November 05, 2025

Respectfully submitted,

/s/___Abdullah Salah_________________

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CERTIFICATE OF SERVICE

I hereby certify that on November 04, 2025, I electronically filed the foregoing Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief with the Clerk of the Court for the United States District Court for the Southern District of Mississippi using the CM/ECF system, which will send notification of such filing to all registered counsel of record.

In addition, I caused copies of the foregoing to be served by email and/or overnight delivery upon:

- U.S. Attorney for the Southern District of Mississippi
  Attn: Civil Division
  501 Court St #4.430,
  Jackson, MS 39201
- Office of Immigration Litigation, Civil Division
  U.S. Department of Justice
  P.O. Box 878, Ben Franklin Station
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