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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS

PEDRO ROMO NAVARRO, Petitioner, v. Renaldo CASTRO, Warden of SOUTH TEXAS ICE PROCESSING CENTER; Sylvester ORTEGA, Field Office Director of Enforcement and Removal Operations, San Antonio Field Office, Immigration and Customs Enforcement; Kristi NOEM, Secretary, U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; Pamela BONDI, U.S. Attorney General; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, Respondents.	Case No. 1:25-dcv-01799 v. Bondi et al **PETITION FOR WRIT OF HABEAS CORPUS** **Agency Number: A** [redacted]

INTRODUCTION

1. Petitioner Pedro Romo Navarro ("Petitioner" or "Mr. Navarro") is a 45-year-old citizen of Mexico who entered the United States without inspection at age seventeen and has since lived and worked continuously in Dallas, Texas. Mr. Navarro is a well-respected construction worker and local expert in residential construction framing. Most importantly, Mr. Navarro is a devoted husband, father, and grandfather. Since 1997, for the past twenty-eight years, Mr. Navarro has lived and worked continuously in Dallas, Texas. He is a pillar in his family, and he provides essential support to his wife, children, and grandchildren, all of whom are U.S. citizens.

2. Mr. Navarro is currently in the custody of Immigration and Customs Enforcement ("ICE") at the South Texas Ice Processing Center, located at 556 Veterans Dr., Pearsall, Texas. He was transferred into ICE custody from Dallas County jail, where he had been detained after a police officer noticed Mr. Navarro riding a bicycle without a front light, and initiated a stop. Mr. Navarro was charged with Evading Arrest, and the charge was reduced and resolved as a Class C Disorderly Conduct offense.

3. Mr. Navarro is being unlawfully detained in ICE custody pursuant to a recent decision by the Board of Immigration Appeals ("BIA") that deems any noncitizen who entered the country without inspection as "seeking admission" to this country under 8 U.S.C. § 1225(b)(2)(A) and thus ineligible for a bond hearing, regardless of how long the noncitizen has resided in the United States. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

4. Even though Mr. Navarro has lived in this country for over twenty-eight (28) years, Respondents now consider him as someone "seeking admission" to the United States and subject to mandatory immigration detention. In accordance with this new interpretation of 8 U.S.C. § 1225(b)(2)(A),

an Immigration Judge summarily denied Mr. Navarro the opportunity to seek a custody review on the basis, and the Immigration Judge ruled that he is ineligible to be released on bond.

5. Respondents' new interpretation of who is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) is contrary to the statutory framework of the Immigration and Nationality Act ("INA"), decades of agency practice, legislative history, and Supreme Court precedents, which apply 8 U.S.C. § 1226(a), *not* 8 U.S.C. § 1225(b)(2)(A), to individuals like Mr. Navarro who have previously entered and are now residing in the United States. Under § 1226(a), Mr. Navarro is subject to discretionary detention and entitled to a bond hearing before an Immigration Judge.

6. Accordingly, Mr. Navarro seeks a writ of habeas corpus requiring that he be released from ICE custody unless Respondents provide a bond hearing under 8 U.S.C. § 1226(a) within seven (7) days.

JURISDICTION

7. Petitioner Pedro Romo Navarro is in the physical custody of Respondents. Mr. Navarro is detained at the South Texas ICE Processing Center in Pearsall, Texas.

8. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

9. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

VENUE

10. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue lies in the United States District Court for the Western District of Texas, the judicial district in which Mr. Navarro currently is detained.

11. Venue is also proper in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the Western District of Texas.

REQUIREMENTS OF 28 U.S.C. § 2243

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

13. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

PARTIES

14. Petitioner Pedro Romo Navarro is a citizen of Mexico who has been in immigration detention since July 2025. On September 15, 2025, Mr. Navarro was unlawfully denied the opportunity to obtain review of his custody by an Immigration Judge ("IJ"), pursuant to the BIA's decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

15. Respondent Renaldo Castro is employed by CoreCivic as Warden of the South Texas ICE Processing Center, which is the facility where Petitioner is detained. He has immediate physical and legal custody of Petitioner. He is sued in his official capacity.

16. Respondent Sylvester Ortega is the Director of the San Antonio Field Office of ICE's Enforcement and Removal Operations division. As such, Mr. Ortega is also Petitioner's legal custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity.

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

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

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

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

EXHAUSTION

21. No statutory exhaustion requirement applies to a petition challenging immigration detention under 28 U.S.C. § 2241. See, e.g., *Montano v. Texas*, 867 F.3d 540, 542 (5th Cir. 2017) ("Unlike 28 U.S.C. § 2254, Section 2241's text does not require exhaustion."); *Robinson v.*

Wade, 686 F.2d 298, 303 n.8 (5th Cir. 1982) ("[S]ection 2241 contains no statutory requirement of exhaustion like that found in section 2254(b).....").

22. The denial of Mr. Navarro's request for a bond hearing based on a finding that he is subject to mandatory detention pursuant to *Matter of Yajure Hurtado* demonstrates that there are no meaningful and genuine administrative remedies or opportunities for Mr. Navarro to challenge his detention. 29 I. & N. Dec. 216 (BIA 2025). It would be futile for Mr. Navarro to challenge the IJ's decision before the BIA, the very agency that issued the order in *Matter of Yajure Hurtado.*

23. Moreover, neither an IJ nor the BIA can rule on constitutional claims. *Matter of C--*, 20 I. & N. Dec. 529, 532 (BIA 1992) ("[I]t is settled that the immigration judge and this Board lack jurisdiction to rule upon the constitutionality of the Act and the regulations."). There are no further remedies to exhaust.

FACTUAL BACKGROUND

24. Mr. Navarro is a forty-five-year-old citizen of Mexico and a devoted grandfather, father, and husband to a family of U.S. citizens. In 1997, he entered the United States without authorization at the age of seventeen (17) years old. He set roots in Dallas, Texas, started building his career in construction, and developed his trade as a residential framing expert. Over the last twenty-eight (28) years, Navarro has lived and worked in Dallas. He has dedicated himself to his family, community, and profession. He is consistently described by others as hardworking, detail oriented, and a highly requested and sought-after general contractor. *See* Ex. F, ¶ 5; Ex. G, ¶ 3-4.

25. In 2002, Mr. Navarro married his wife Carolina, a U.S. citizen. Together, they have two U.S. citizen daughters: Elizabeth and Carolina Romo. Elizabeth and Carolina Romo have daughters who are Mr. Navarro's U.S. citizen grandchildren.

26. Mr. Navarro is an involved father who manages, despite difficulties, to travel regularly to spend time with his daughters in Houston, Texas, where they have both lived for many years. *See* Ex. A, ¶ 12-13. In addition to being an involved and dedicated father, Mr. Navarro provides financial support to his family members. He has not only helped his daughters during financial struggles, but he has provided for them without being asked to do so. *See* Ex. A, ¶ 6-8, Ex. B, ¶ 6-7.

27. Navarro also has extended family in the United States, including nieces, a nephew, and a cousin, who are all U.S. citizens. According to his family, he is a pillar, who is gentle, nurturing, trustworthy, and accountable. *See* Ex. A-D.

Mr. Navarro's Arrest and Summary Denial of Bond

28. On June 13, 2025, a police officer saw Mr. Navarro riding a bicycle without a front light and initiated a traffic stop. Because Mr. Navarro did not come to a full stop immediately, the officer arrested him and took him into custody. Mr. Navarro was charged with Evading Arrest and held at Dallas County Jail.

29. In July 2025, Mr. Navarro's charge was reduced and resolved as a Class C Disorderly Conduct offense. He was subsequently transferred to ICE custody and placed in removal proceedings pursuant to section 212(a)(6) of the INA (8 U.S.C. § 1182(a)(6)) for being present in the United States without authorization.

30. On August 26, 2025, with the assistance of pro bono counsel, Mr. Navarro requested a bond hearing before an IJ to review his custody status.

31. On September 15, 2025, IJ Veronica M. Segovia summarily denied Mr. Navarro's request for a bond hearing, citing lack of jurisdiction pursuant to the BIA's decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Ex. I.

32. Today, Mr. Navarro remains unlawfully detained at the South Texas ICE Processing Center in Pearsall, Texas. As each day passes, he continues to be deprived of his statutory right to a custody redetermination hearing (i.e. bond hearing) pursuant to 8 U.S.C. § 1226(a), which authorizes the IJ to release Mr. Navarro on bond pursuant to an evaluation of his flight risk and danger to the community.

Mr. Navarro's Ties to the Community and Valid Claim to Lawful Immigration Status

33. Collectively, Mr. Navarro's family and friends affirm that he is not a danger to the community and that he is committed to complying with all immigration laws while pursuing his immigration case. *See* Ex. A-G.

34. Mr. Navarro has remarkably strong ties to his family and community in the United States, as is reflected in the attached exhibits. For example, the same week Mr. Navarro was detained, he made sure to find a way to call Brian Loera to congratulate him on his newborn child. *See* Ex. E. This was not the first time Navarro went out of his way to show up for his family despite hardship. When his daughter was having her first child, Mr. Navarro did not have a car. Yet he nonetheless coordinated a ride and made the three-and-a-half-hour trip from Dallas to Houston to meet his daughter and granddaughter at the hospital. *See* Ex. A, ¶ 12-13. When his other daughter needed immediate help leaving a relationship, he once again found a way to get transportation and showed up for his family. *See* Ex. B, ¶ 5. And when Navarro's nephew needed someone to fill in for his father at his wedding ceremony, he picked Navarro to walk him down the aisle. *See* Ex. D, ¶ 6.

35. Additionally, Mr. Navarro has a meritorious pathway to lawful immigration status. He is eligible to apply for Cancellation of Removal for Non-Legal Permanent Residents under 8 U.S.C. § 1229b(b)(1), since his wife is a qualifying relative, he has been living in the United States for over ten years, and his criminal history does not bar him from the relief. *See* Ex. H. Either his wife or one of his daughters can also file an immediate relative petition on his behalf, which would

allow Mr. Navarro to obtain an immigrant visa through consular processing if he obtains a provisional waiver for unlawful presence. *See* 8 C.F.R. § 212.7(e). He could complete most of this process in the United States, while continuing to support his family.

36. Without relief from this court, Mr. Navarro faces months, or even years, of unlawful detention while pursuing his valid claim to immigration relief, needlessly separated from his wife, daughters, granddaughters, and community.

LEGAL FRAMEWORK

Mr. Navarro Is Subject to Detention Under 1226(a), Not 1225(b)

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

38. First, 8 U.S.C. § 1226(a) authorizes the discretionary detention of noncitizens in removal proceedings pursuant to 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally entitled to a bond hearing in immigration court at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d).

39. Second, 8 U.S.C. § 1226(c) provides for mandatory detention of noncitizens who have been arrested, charged with, or convicted of certain crimes. Individuals detained under this category are not eligible for a bond hearing in immigration court.

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

41. Last, 8 U.S.C. § 1231(a) provides for detention of noncitizens who have been ordered removed.

42. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2). Mr. Navarro is not subject to mandatory detention under 8 U.S.C. § 1226(c) because he does not have a criminal history that would trigger that provision. Nor does he have a final order of removal that would result in detention pursuant to 8 U.S.C. § 1231(a).

43. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104-–208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

44. Following the enactment of the IIRIRA, EOIR promulgated interim regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a). *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).

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

46. On July 8, 2025, ICE announced a new policy that rejected well-established understanding of the statutory framework and reversed decades of practice.

47. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission,"[1] claims that all persons who entered the United States without inspection shall now be subject to mandatory detention provision under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended and affects those who have resided in the United States for months, years, and even decades.

48. On September 5, 2025, the BIA adopted this same position in a published decision, *Matter of Yajure Hurtado*. There, the Board held that all noncitizens who entered the United States without admission or parole are subject to detention under § 1225(b)(2)(A) and are ineligible for IJ bond hearings, regardless of how long they have resided in the United States.

49. The BIA's decision in *Matter of Yajure Hurtado* conflicts with Supreme Court precedents. *See Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018) (explaining how 8 U.S.C. § 1226(a) applies to "certain aliens already in the country"); *Johnson v. Arteaga-Martinez,* 596 U.S. 573, 579 (2022) (citing 8 U.S.C. § 1226 as "govern[ing] the detention of certain noncitizens present in the country who were inadmissible at the time of entry"). The Supreme Court's reading of §1226(a) must govern. *See Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967 (2005).

50. Other federal district courts in the Fifth Circuit, including three decisions in the Western District of Texas, have already rejected the BIA's new interpretation in *Matter of Yajure Hurtado* as inconsistent with the statute and Supreme Court precedents. *See Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136, at *3 (W.D. La. Aug. 27, 2025)

[1] *Available at* https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission.

(holding that the government's position that § 1225 applied 'because Petitioner is present in the United States without being admitted' contradicts Supreme Court precedent); *Lopez Santos v. Noem*, No. 3:25-CV-01193, 2025 WL 2642278,*5 (W.D. La. Sept. 11, 2025) ("Respondents' position that § 1225 applies 'because Petitioner is present in the United States without being admitted' is contrary to the Supreme Court's analysis of the application of § 1225 to arriving aliens."); *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *10–*12 (W.D. Tex. Sept. 22, 2025); *Buenrostro-Mendez v. Bondi*, No. CV H-25-3726, 2025 WL 2886346, at *3 (S.D. Tex. Oct. 7, 2025); *Vieira v. De Anda-Ybarra*, No. EP-25-CV-00432-DB, 2025 WL 2937880, at *7 (W.D. Tex. Oct. 16, 2025); *Hernandez-Fernandez v. Lyons*, No. 5:25-CV-00773-JKP, 2025 WL 2976923, at *8–*10 (W.D. Tex. Oct. 21, 2025).

51. Other federal courts across the country have also adopted the same reading of the INA's detention authorities and rejected DHS and EOIR's new interpretation. *See, e.g., Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379, at *7 (E.D. Mich. Aug. 29, 2025) (holding that §1226(a), not § 1225(b)(2)(A), applied to a noncitizen apprehended in a traffic stop twenty-five years after entering the United States without authorization); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d , 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal.

Sept. 8, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Sampiao v. Hyde*, No. 1:25- CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp. 3d , 2025 WL 2084238 (D. Mass. July 24, 2025).

52. These decisions are consistent with the plain language of the statute, as Section 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." 8 U.S.C. § 1226(a). These removal hearings are held under § 1229a, to "decid[e] the inadmissibility or deportability of a[] [noncitizen]." 8 U.S.C. § 1229a. The text of 8 U.S.C. § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)(ii) makes clear that only specific subcategories of individuals who entered without inspection—those who are "charged with, [] arrested for, [] convicted of, admit[] having committed, or admit[] 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"—are subject to mandatory detention. By default, then, individuals who entered without inspection and who are not specifically mentioned in subparagraph (E)(ii), remain eligible for release pursuant to § 1226(a). As the Supreme Court has stated, when Congress creates "specific exceptions" to a framework in a statute, it "proves" that absent those exceptions, the general framework in the statute applies. *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010).

53. Had Congress intended for 1225(b) to apply to all applicants for admission

regardless of the time they had remained in the United States, the entire Laken Riley Act, Pub. L. No. 119-1, § 2, 139 Stat. 3, 3 (2025), which introduced the language in 8 U.S.C. § 1226(c)(1)(E)(ii), would be superfluous.

54. Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. That statutory provision's entire framework is premised on inspections at the border of people who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A).

55. A court in the Southern District of Texas that recently addressed the same issue presented here stated: "As almost every district court to consider this issue has concluded, 'the statutory text, the statute's history, Congressional intent, and § 1226(a)'s application for the past three decades' support finding that § 1226 applies to these circumstances." *Buenrostro-Mendez*, No. CV H-25-3726, 2025 WL 2886346, at *3. Furthermore, as a judge in the Western District of Texas recognized, "[m]any courts have . . . found it appropriate to give the Government a short window in which to complete the bond hearing, or else release the petitioner." *Lopez-Arevelo*, 2025 WL 2691828, at *13. For example, the court in the Southern District of Texas ordered the respondents to "either hold a bond hearing under § 1226 within 14 days of [its] order . . . or release [the petitioner]." *Buenrostro-Mendez*, No. CV H-25-3726, 2025 WL 2886346, at *4. Petitioner respectfully requests that this Court likewise require a prompt bond hearing.

The Denial of a Bond Hearing Pursuant to the BIA's Decision in Matter of Yajure Hurtado is Arbitrary, Capricious and Contrary to Law, in Violation of the Administrative Procedure Act

56. Federal courts have jurisdiction, through the APA, to "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). APA claims are cognizable on habeas. 5 U.S.C. § 703 (providing that judicial review of agency action under the APA may proceed by "any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus"). The APA affords a right of review to a person who is "adversely affected or aggrieved by agency action." 5 U.S.C. § 702.

57. As set forth *supra*, Respondents introduced a new policy prescribing mandatory detention with no bond eligibility for individuals who entered without inspection. *See supra,* ¶¶ 43-45. The BIA subsequently issued its decision in *Matter of Yajure Hurtado* endorsing this theory. The IJ then found Mr. Navarro subject to mandatory detention under Section 1225(b) (also known as INA § 235(b)(2)(A)) and summarily denied his request for a bond hearing, citing *Matter of Yajure Hurtado*. Ex. I.

58. The BIA's decision in *Matter of Yajure Hurtado* is arbitrary, capricious, and contrary to law in violation of the APA. As discussed above, this decision upended decades of practice and is inconsistent with Supreme Court precedents. Likewise, the IJ's perfunctory decision denying Mr. Navarro a bond hearing based on *Matter of Yajure Hurtado* is arbitrary, capricious, and contrary to law.

Mr. Navarro's Procedural Due Process Rights Are Being Violated Because His Detention Contradicts the Plain Meaning of the Statute and He was Afforded No Notice or Opportunity to Contest Respondents' Application of Section 1225(b) to His Section 1226(a) Proceedings.

59. Procedural due process constrains governmental decisions that deprive individuals of property or liberty interests within the meaning of the Due Process Clause of the Fifth Amendment.

60. Because Mr. Navarro's detention has been unaccompanied by any of the procedural protections that such a significant deprivation of liberty requires under the Due Process Clause, for example any meaningful process to contest his detention, his detention violates his procedural due process rights. *See Mathews v. Eldridge*, 424 U.S. 319, 332 (1976).

61. The Supreme Court has long made clear that, where the government seeks to deprive an individual of a "particularly important individual interest[]," it must bear the burden of justifying this deprivation by clear and convincing evidence. *See, e.g.*, *Addington v. Texas*, 441 U.S. 418, 424 (1979). In cases like Mr. Navarro's, a "clear and convincing" evidence standard provides the appropriate level of procedural protection. *See* id. at 423.

62. Mr. Navarro has a significant private interest in not being detained. Freedom from detention is considered the "most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the very liberty that [the Due Process Clause] protests." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). To be detained without the possibility of a bond hearing leaves Mr. Navarro without any recourse or possibility of release while his removal proceedings are ongoing.

63. The second *Mathews* factor also favors Mr. Navarro. When Mr. Navarro filed for a bond hearing on August 26, 2025, he was considered detained under 1226(a) and eligible for a bond hearing. The BIA's unilateral decision ten days later, on September 5, 2025, in *Matter of Yajure Hurtado,* to extend a different statutory provision to Mr. Navarro's circumstances, now leaves his liberty at risk. As in other recent cases, the IJ declined to exercise jurisdiction, finding Mr. Navarro subject to mandatory detention pursuant to the BIA's decision in *Yajure Hurtado*. Mr. Navarro was therefore denied any hearing where he could contest his detention, creating a high risk that he has been, and will continue to be, erroneously deprived of his liberty. Providing Mr. Navarro with a simple bond hearing would greatly reduce the risk of an erroneous deprivation of his liberty.

64. The third factor concerns the government's interest in the proceedings, as well as any financial or administrative burdens associated with permissible alternatives. The government has an interest ensuring that federal laws are applied consistently, properly, and in a manner that upholds the U.S. Constitution. Utilizing the wrong statute to detain someone does not further those interests and undermines Congress's legislative intent. Furthermore, it would not be burdensome on the government to apply 1226(a)'s discretionary detention scheme to Mr. Navarro, as IJs routinely hold bond hearings where they analyze flight risk and danger to the community. Providing Mr. Navarro with a bond hearing would be far more cost effective and less administratively burdensome than keeping him detained.

65. At least three decisions in the Western District of Texas have concluded that the *Mathews* factors weigh in favor of petitioners challenging their detention under 1225(b)(2) pursuant to *Matter of Yajure Hurtado*. *See Hernandez-Fernandez*, No. 5:25-CV-00773-JKP,

2025 WL 2976923, at *8–*10; *Lopez-Arevelo*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *10–*12; *Vieira v. De Anda-Ybarra*, No. EP-25-CV-00432-DB, 2025 WL 2937880, at *7.

66. These courts have also determined that the burden of proof at the bond proceedings should be placed on the government. As two decisions in the Western District of Texas recently noted, "as of 2020, the 'vast majority'—an 'overwhelming consensus'—of courts granting immigration detainees' habeas petitions have placed the burden on the Government to prove by clear and convincing evidence that the detainee poses a danger or flight risk." Lopez-Arevelo, No. EP-25-CV-337-KC, 2025 WL 2691828, at *12 (quoting *Velasco Lopez v. Decker*, 978 F.3d 842, 855 n.14 (2d Cir. 2020); *Hernandez-Fernandez*, No. 5:25-CV-00773- JKP, 2025 WL 2976923, at *10 (same). These decisions observed that the consensus appears to be holding across the country. *See, e.g., Velasquez Salazar v. Dedos*, No. 25-cv-835, 2025 WL 2676729, at *9 (D.N.M. Sept. 17, 2025); *Morgan v. Oddo*, No. 24-cv-221, 2025 WL 2653707, at *1 (W.D. Pa. Sept. 16, 2025); *J.M.P. v. Arteta*, No. 25-cv-4987, 2025 WL 2614688, at *1 (S.D.N.Y. Sept. 10, 2025); *Espinoza*, 2025 WL 2581185, at *14; *Arostegui-Maldonado v. Baltazar*, —— F. Supp. 3d ——, 2025 WL 2280357, at *12 (D. Colo. Aug. 8, 2025).

67. Finally, even if the holding in *Matter of Yajure Hurtado* were somehow permissible, its retroactive application to Mr. Navarro's case would still be improper. The Fifth Circuit Court of Appeals has previously rejected retroactive application of substantial changes in BIA case law. *See Monteon-Camargo v. Barr,* 918 F.3d 423, 431 (5th Cir. 2019), *as revised* (Apr. 26, 2019) ("We conclude that the definition of CIMTs announced in *Diaz-Lizarraga* may be applied only to crimes committed after that decision issued. The BIA erred in applying its new definition to Monteon-Camargo's conviction of attempted theft."). Under the Fifth Circuit's test, a court must "balance the ills of retroactivity against the disadvantages of prospectivity." *Microcomputer*

Technology Institute v. Riley, 139 F.3d 1044, 1050 (5th Cir. 1998). Notable among these ills is that retroactivity can "compromise the familiar due process considerations of fair notice, reasonable reliance, and settled expectations." *Monteon-Camargo,* 918 F.3d at 430-31 (internal quotation marks omitted). This is particularly true when "the change in the Board's guidance . . . [is] significant." *Id.* at 431. Like the BIA decision at issue in *Monteon-Camargo*, *Matter of Yajure Hurtado* "drastically chang[ed] the landscape." *Id.* Applying the new rule of general applicability announced in *Matter of Yajure Hurtado* to prior conduct "contravenes basic presumptions about our legislative system." *Id.* For decades, people who arrived without inspection were placed in standard removal proceedings and received bond hearings.

68. In light of the substantial change imposed by *Matter of Yajure Hurtado*, several district courts have rejected retroactive application of that decision. *See, e.g.*, *Ballestros v. Noem*, No. 3:25-CV-594-RGJ, 2025 WL 2880831, at *3-4 (W.D. Ky. Oct. 9, 2025); *Patel v. Noem*, No. 3:25-CV-373-RGJ, 2025 WL 2823607, at *4-5 (W.D. Ky. Oct. 3, 2025); *Moral Chavez v. Director of Detroit Field Office*, No. 4:25-CV-02061-SL, 2025 WL 2959617, at *8 (N.D. Ohio Oct. 20, 2025). This Court should do the same.

Navarro's Substantive Due Process Rights Are Being Violated Because His Detention Bears No Reasonable Relationship to Any Legitimate Government Purpose

69. Mr. Navarro's detention violates his substantive right to due process because he is not subject to expedited removal and cannot be deemed a danger to the community or a flight risk.

70. To comport with substantive due process, civil immigration detention must bear a reasonable relationship to its two regulatory purposes— (1) to ensure the appearance of

noncitizens at future hearings and (2) to prevent danger to the community pending the completion of removal. *Zadvydas*, 533 U.S. at 690-91.

71. As discussed above, Mr. Navarro has strong familial ties to the United States and has consistently been employed in construction and, specifically, framing, for his entire adult life. *See* Ex. F-G. Mr. Navarro has consistently been a part of his U.S. citizen children's and grandchildren's lives. He is also very close with his nieces and nephews. *See* Ex. D-F. Upon his release from custody, Mr. Navarro is committed to continue his work in construction to financially and emotionally support his wife, children, and grandchildren and to pursue his valid claims to immigration relief. *See* Ex. A-B. His recent Class C ticket is a minor, non-violent incident that is an outlier to his many years of good conduct in the U.S. There is therefore no reason to believe that he would fail to appear at future hearings, nor would he be a danger to his community.

72. The government thus has no legitimate interest in detaining him. *See Demore v. Hyung Joon Kim*, 538 U.S.510, 533 (2003) (O'Connor, J., concurring).

73. Indeed, no public interest is served by detaining a forty-five--year-old man who is a critical support to his family and a highly requested general contractor in his community.

74. Navarro's detention is accordingly unlawful, warranting immediate release.

CLAIMS FOR RELIEF

COUNT I

Violation of the INA

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

76. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

77. Here, Mr. Navarro entered the United States in March 1997 without authorization. Since then, he has lived in Dallas, Texas for twenty-eight continuous years.

78. Therefore, the application of § 1225(b)(2) to Navarro unlawfully mandates his continued detention and violates the INA.

COUNT II

Agency Action that is Arbitrary, Capricious, and Contrary to Law Under the Administrative Procedure Act, 5 U.S.C. § 706(2)(A)

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

80. Courts must "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). The BIA's decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), on which the IJ relied in Mr. Navarro's case, deviates from decades of practice and Supreme Court precedents. The BIA's decision is therefore arbitrary, capricious, and contrary to law in violation of the APA, and Mr. Navarro's continued detention without a bond hearing is unlawful.

COUNT III

Violation of Procedural Due Process

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

82. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). And the Due Process Clause applies to noncitizens, "whether their presence here is lawful, unlawful, temporary or permanent." *Id.* at 693.

83. Mr. Navarro has a fundamental interest in liberty and being free from official restraint.

84. The government's detention of Mr. Navarro without a bond redetermination hearing to determine whether he is a flight risk or danger to others violates his right to due process.

COUNT IV

Violation of Substantive Due Process

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

86. Moreover, the government cannot demonstrate that Mr. Navarro needs to be detained. See *Zadvydas*, 533 U.S. at 690 (finding immigration detention must further the twin goals of (1) ensuring the noncitizen's appearance during removal proceedings and (2) preventing danger to the community).

87. In this case, the government cannot demonstrate that Mr. Navarro is either a danger to the community or a flight risk. Thus, Mr. Navarro should not be detained and should be released.

PRAYER FOR RELIEF

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

a. Assume jurisdiction over this matter;

b. Order that Petitioner shall not be transferred outside the Western District of Texas while this habeas petition is pending;

c. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;

d. Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner or, in the alternative, provide Petitioner with a bond hearing, where the government bears the burden of proof, pursuant to 8 U.S.C. § 1226(a) within seven days;

e. Declare that Petitioner's detention is unlawful;

f. Grant any other and further relief that this Court deems just and proper.

DATED this 7th day of November, 2025.

By: */s/ Charles M. Gearing*

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VERIFICATION OF COUNSEL

I, Charles M. Gearing, submits this verification on behalf of the Petitioner. I have discussed with Petitioner, and the cited witnesses, the events described in this Petition for Writ of Habeas Corpus, and verify that the statements in this Petition are true and correct to the best of our knowledge and belief.

/s/ Charles M. Gearing
Charles M. Gearing