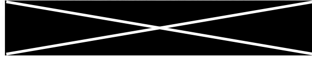
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

HECTOR GUTIERREZ ORTIZ,



Petitioner

v.

KRISTI NOEM, in her official capacity as U.S. Secretary of Homeland Security; PAMELA BONDI, in her official capacity as Attorney General of the United States; GARRET J. RIPA, in his official capacity as Field Director of the ICE Miami Field Office; WARDEN, Florida Baker Correctional Institute.

Respondents.

Case No. ____________________

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

INTRODUCTION

1. Petitioner Hector Gutierrez Ortiz ("Mr. Gutierrez") is a noncitizen who entered the United States over ten years ago and has resided continuously in this country since that entry. On October 27, 2025, U.S. Immigration and Customs Enforcement ("ICE") arrested Mr. Gutierrez and placed him in immigration custody pending completion of removal proceedings. Mr. Gutierrez arrived in the United States years ago and does not have a significant criminal history, yet the Department of Homeland Security ("DHS") and the Executive Office of Immigration

Review ("EOIR") have concluded that Mr. Gutierrez is subject to mandatory immigration detention under 8 U.S.C. § 1225(b)(2), as an "applicant for admission" who is "seeking admission" to the United States.

2. DHS's interpretation of its detention authority under 8 U.S.C. § 1225(b)(2) marks a complete reversal of the interpretation of the statute that the government has embraced since its inception three decades ago, its prior practice, Supreme Court precedent, and the plain language of the Immigration and Nationality Act ("INA").

3. This Court should therefore intervene and grant Mr. Gutierrez's petition for writ of habeas corpus and order his release from immigration custody or, in the alternative, require EOIR to conduct a bond hearing under 8 U.S.C. § 1226(a) at which DHS bears the burden of proof that continued detention is required.

JURISDICTION AND VENUE

4. Mr. Gutierrez is currently detained at the Florida Baker Correctional Institute in Sandston, Florida, and is in the physical custody of Respondents. Exh. 1, ICE Detainee Locator Printout.

5. This action arises under the Due Process Clause of the Fifth Amendment and the INA, 8 U.S.C. § 1101 et seq.

6. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and 28 U.S.C. §§ 2201-02 (declaratory relief). Mr. Gutierrez's detention by Respondents is a "severe restraint" on his individual liberty "in custody in violation of the ... laws ... of the United States." *See Hensley v. Municipal Court, San Jose-Milpitas Jud. Dist.*, 411 U.S. 345, 351 (1973).

7. 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.

8. Venue lies in the United States District Court for the Middle District of Florida, the judicial district in which Mr. Gutierrez is detained at the time the petition filed. 28 U.S.C. § 1391(e); *Rumsfeld v. Padilla*, 542 U.S. 426, 434, 447 (2004).

REQUIREMENTS OF 28 U.S.C. § 2243

9. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith," unless the petitioners are 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.*

10. This time limit "is subordinate to the Court's discretionary authority to set deadlines under Rule 4[.]" *See Diaz-Ortega v. Lund*, 2019

WL 13292924 (W.D. La. June 28, 2019) (marks and citation omitted). However, a 60-day deadline is unreasonable in this case. 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). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

11. Mr. Gutierrez requests the Court issue an Order to Show Cause, and direct Respondents to file a response within three days, in light of the significant restraint on Petitioner's liberty.

PARTIES

12. Petitioner Hector Gutierrez Ortiz is a native and citizen of Mexico who has been in immigration detention since on or about October 27, 2025. Mr. Gutierez is detained in ICE custody at the Florida Baker Correctional Institute in Sandston, Florida.

13. Respondent Kristi Noem is the Secretary of Homeland Security, and in that capacity is responsible for DHS and all sub-cabinet agencies

of DHS, including ICE. She is also responsible for DHS and ICE policies. She is sued in her official capacity.

14. Respondent Pamela Bondi is the United States Attorney General. She has supervisory authority over EOIR, which oversees the immigration courts. She is sued in her official capacity.

15. Respondent Garret J. Ripa, Field Office Director of the ICE Miami Field Office and is responsible for ICE's operations in Florida where Mr. Gutierez is held. He is sued in his official capacity.

16. The Warden of the Florida Baker Correctional Institute is the immediate custodian of Mr. Gutierrez. The Warden is sued in his or her official capacity.

EXHAUSTION

17. The failure to exhaust administrative remedies does not bar Petitioner's claims unless "Congress specifically mandates" exhaustion. *McCarthy v. Madigan*, 503. U.S. 140, 144 (1992)).

18. Moreover, because Mr. Gutierrez's continued detention violates his right to due process—a constitutional right—administrative exhaustion is excused. *See Guitard v. U.S. Sec'y of the Navy*, 967 F.2d 737, 741 (2d Cir. 1992) ("Exhaustion of administrative remedies may not be required when . . . a plaintiff has raised a 'substantial constitutional question.'").

19. Although the Court may impose exhaustion requirements as a prudential matter, it should not do so in this case because further administrative exhaustion would be futile. Critically, as part of a recent policy shift, the Board of Immigration Appeals issued *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), concluding that noncitizens who entered the United States without inspection at any point are forever after considered to be "arriving aliens" who are "seeking admission" and thus subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). Even though, as discussed below, this decision is legally erroneous, all immigration judges—including Appellate Immigration Judges at the Board—are obligated to apply published Board precedent. 8 C.F.R. § 103.10(b). Thus, waiting for the resolution of DHS's appeal to the Board with respect to a bond request would be futile because the result is foreclosed. *See Vasquez Carcamo v. Noem, et al.*, No. 2:25-CV-00922-SPC-NPM, 2025 WL 3119263, at *3 (M.D. Fla. Nov. 7, 2025) ("Requiring Hinojosa Garcia to make an administrative request for a bond hearing would be futile because the result is predetermined by *Yajure Hurtado*.").

STATEMENT OF FACTS

20. Mr. Gutierrez entered the United States in 2013 without inspection or admission, after he opted for voluntary return in 2012. Since he returned to the United States in 2013, Mr. Gutierrez has lived

and worked in Quincy, Florida. Before he was detained, he lived with his partner of fourteen years and their three young United States citizen children in Quincy and worked as a chef at a local Mexican restaurant. He is neither a flight risk nor is he a danger to the community.

21. On October 25, 2025, Mr. Gutierrez was driving home from work and was pulled over by the police for speeding. Because system checks showed an old bench warrant for a charge that had been dropped, Mr. Gutierrez was taken to Gadsen County Jail. ICE filed a detainer and took him into custody on October 27, 2025.

22. Upon information and belief, a Notice to Appear has been issued and Mr. Gutierrez is scheduled to appear before an immigration judge on November 14, 2025.

LEGAL BACKGROUND

Detention Authority

23. In 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Pub. L. 104-208, which set forth separates procedures for the removal and detention of arriving or recently arrived noncitizens and those who have entered and established a presence in the United States, even those who have done so in violation of the immigration laws. *Compare* 8 U.S.C. § 1225, *with* §§ 1226 ("Apprehension and detention of aliens"), 1229a ("Removal

proceedings"). For those individuals with an established presence in the United States, the INA mandates that "an immigration judge shall conduct proceedings for deciding the inadmissibility or deportability of a [noncitizen]." 8 U.S.C. § 1229a(a)(1). Removal proceedings under 8 U.S.C. § 1229a(a)(1) "shall be the sole and exclusive procedure from the United States" unless otherwise specified in the INA. 8 U.S.C. § 1229a(a)(3).

24. During the pendency of standard removal proceedings under 8 U.S.C. § 1229a, § 1226 provides for the detention of noncitizens already in the United States, even those who entered illegally or without inspection. While § 1226(c) mandates the detention of certain classes of criminal noncitizens, § 1226(a) sets forth a discretionary detention scheme, allowing that a noncitizen "may be arrested and detained pending a decision on whether the alien is to be removed from the United States[.]" 8 U.S.C. § 1226(a). After an arrest, the noncitizen may continue to be detained, released on conditional parole, or released on a bond of at least $1,500. *Id.*

25. Once a noncitizen is detained, DHS makes an initial custody determination. 8 C.F.R. §§ 1003.19(a), 1236.1(d). The noncitizen may have the initial custody determination reviewed by an immigration

judge, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), and ultimately by the Board, *see* 8 C.F.R. § 1236.1(d)(3).

26. As part of IIRIRA, Congress created an expedited removal process for certain "applicants for admission" deemed to be "arriving aliens." 8 U.S.C. § 1225(b). The INA defines an applicant for admission as a noncitizen "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 a [noncitizen] who is brought to the United States after having been interdicted in international or United States waters)." 8 U.S.C. § 1225(a)(1). The INA further clarifies that the term "application for admission" has "reference to the application for admission *into* the United States," making clear that the term applies to those applying to enter into the United States. 8 U.S.C. § 1101(a)(4) (emphasis added). Notably, individuals subject to expedited removal are not eligible for bond pending completion of their removal hearings. *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018); *see id.* at 303 (distinguishing individuals subject to § 1225(b) from those "already present in the United States").

27. Critically, expedited removal proceedings do not apply to all "applicants for admission." Instead, they may be applied only to: (1) individuals who are arriving in the United States at a port of entry

without valid documents; and (2) those without valid documents who have been in the United States for less than two years and have not been admitted or paroled. 8 U.S.C. § 1225(b)(1)(A)(iii)(II); *see Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 109 (2020). Further, this second subset of individuals—noncitizens who have been in the United States for less than two years and have not been admitted or paroled—only become subject to expedited removal if so designated by DHS. *See* 8 U.S.C. § 1225(b)(1)(A)(iii)(I) (granting discretionary authority to apply expedited removal to any or all noncitizens described in 8 U.S.C. § 1225(b)(1)(A)(iii)(II)); *see also* Notice, Designating Aliens for Expedited Removal, 90 Fed. Reg. 8139, 8139 (Jan. 24, 2025) (designating the entire subset of noncitizens described in 8 U.S.C. § 1225(b)(1)(A)(iii)(II) subject to expedited removal: i.e., noncitizens "determined to be inadmissible under [8 U.S.C. §§ 1182(a)(6)(C) or (a)(7)] who have not been admitted or paroled into the United States and who have not affirmatively shown . . . that they have been physically present in the United States continuously for the two-year period immediately preceding the date of the determination of inadmissibility").

28. Noncitizens placed in expedited removal proceedings are referred to standard removal proceedings under § 1229a if they establish a credible fear of persecution if removed. *See* 8 U.S.C. § 1225(b). Otherwise,

the noncitizen is ordered removed "without further hearing or review." 8 U.S.C. § 1225(b)(1)(B)(iii). Further, any noncitizen "subject to the procedures under [8 U.S.C. § 1225(b)] shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed." 8 U.S.C. § 1225(b)(1)(B)(iv).

29. Finally, § 1225(b)(2) mandates the detention of certain "applicants for admission" not covered by § 1225a(b)(1). Yet in keeping with the statute's focus on arriving aliens, the statute does not mandate detention for all applicants for admission. Instead, § 1225(b)(2)(A) only mandates the detention of "an applicant for admission" when "the examining immigration officer determines" that the noncitizen who "seeking admission is not clearly and beyond a doubt entitled to be admitted."

30. Courts and the U.S. Government have consistently taken the position that noncitizens who have entered without inspection and are encountered in the United States years after their initial entry are entitled to removal proceedings under § 1229a and subject to detention under § 1226. *See, e.g., Jennings*, 583 U.S. at 303 ("While the language of §§ 1225(b)(1) and (b)(2) is quite clear, §1226(c) is even clearer. As noted, § 1226 applies to aliens *already present in the United States*.") (emphasis added); IIRIRA Implementing Regulation, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) ("Despite being applicants for admission,

aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination."); This is because these individuals are not "seeking admission." *See Lopez Benitez v. Francis*, -- F. Supp. 3d --, 2025 WL 2371588 (S.D.N.Y. Aug. 8, 2025) (holding that a noncitizens who has been residing in the United States for more than two years cannot be classified as an "alien seeking admission"); *Martinez v. Hyde*, 2025 WL 2084238 (D. Mass. July 24, 2025); *see also* Ex. B, Letter from Congressmen Lamar Smith Describing Legislative Intent.

31. Indeed, nearly 30 years of agency interpretation of the law would have provided Mr. Gutierrez with an opportunity to seek review of their custody through a hearing before an immigration judge under 8 U.S.C. § 1226(a).

32. Yet on July 8, 2025, the Government abruptly rejected the reading of 8 U.S.C. § 1226(a) it had embraced when IIRIRA was first enacted and over three decades since. In a complete reversal, "DHS, in coordination with the Department of Justice (DOJ). . . revisited its legal position on detention and release authorities," and issued guidance instructing all ICE employees that 8 U.S.C. § 1225 rather than § 1226 "is the applicable immigration detention authority for all applicants for admission." Exh.

C, ICE Memo: Interim Guidance Regarding Detention Authority for Applicants for Admission.

33. And on September 5, 2025, the Board of Immigration Appeals adopted DHS's novel statutory reading of 8 U.S.C. § 1225(b)(2)(A) in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The Board found no distinction between the statutory terms "applicant for admission" and "seeking admission," and concluded that § 1225(b)(2) must be read to include all noncitizens who have not been inspected and admitted at any point.[1] *Id.* at 221-22. Further, the Board asserted that legislative history supported its construction, although it did not cite any legislative history addressing the detention statutes. *Id.* at 223-25.

34. Legislative history actually contradicts the Board's analysis. In February 1997, Congressman Lamar Smith, then Chair of the House Subcommittee on Immigration and Claims for the Committee on the Judiciary, wrote to the former Immigration and Naturalization Service (INS) in response to the INS's proposed rulemaking to implement the

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[1] Indeed, nearly 30 years of agency interpretation of the law would have provided Mr. Gutierrez with an opportunity to seek review of their custody through a hearing before an immigration judge under 8 U.S.C. § 1226(a). In fact, just weeks prior to *Matter of Yajure Hurtado*, the Attorney General designated for publication a decision recognizing that a noncitizen arrested in the interior of the United States and placed into removal proceedings under 8 U.S.C. § 1229a is detained under 8 U.S.C. § 1226(a) and eligible for release on bond. *See Matter of Akhmedov*, 29 I. & N. Dec. 166 (BIA 2025).

provisions of IIRIRA. *See* Exh. B. In his comment on the proposed regulation, he explained the legislative intent behind several provisions of IIRIRA that focused on "prompt apprehension, adjudication, and removal of aliens who are not lawfully present in the United States." *Id.* at 4. Specifically, he discussed expedited removal, the concept of arriving aliens, limitations on relief, changes to proceedings before an immigration judge, and limitations of appeals. *See generally id.*

35. Relevant here, Congressman Smith explained that the definition of "arriving alien" should be limited. He noted that the legislation used the term "arriving alien" "to distinguish aliens at the border of the United States from those who have made a substantial physical entry into the United States." *Id.* at 5-6. Congressman Smith thus recommended the regulations adopt a temporally limited measure as to who is considered "arriving," because "[c]riteria based on time are preferable . . . [and] would embrace both those who remain close to the border as well as those who escape shortly after having made an entry." *Id.* at 6. Congressman Smith continued, "[b]riefly put, if the alien is caught on the day he or she arrives, the alien is an 'arriving' alien, but not otherwise. This is a common sense approach that should be easy for INS officials to understand and implement." *Id.*

36. In fact, courts that have reviewed this issue have almost universally agreed with this "common sense approach" and overwhelmingly rejected Respondents' new reading of the statute. *Vasquez Carcamo*, 2025 WL 3119263; *Hinojosa Garcia v. Noem*, 2:25-cv-00879-SPC-NPM, 2025 WL 3041895 (M.D. Fl. Oct. 31, 2025); *Lopez Santos v. Noem*, No. 3:25-cv-1193-TAD-KDM, 2025 WL 2642278 (W.D. La. Sept. 11, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *see also Quispe-Ardiles v. Noem*, No. 1:25-cv-01382-MSN-WEF (E.D. Va. Sept. 30, 2025); *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Hasan v. Crawford*, ---F. Supp. 3d ---, 2025 WL 2682255 (E.D. Va. Sept. 19, 2025); *Alvarez-Martinez v. Noem*, No. 5:25-CV-01007-JKP, 2025 WL 2598379 at *4 (W.D. Tex., Sept. 8, 2025); *Romero v. Hyde*, --- F. Supp. 3d ---, 2025 WL 2403827, at *8-13 (D. Mass. Aug. 19, 2025); *Maldonado v. Olson*, --- F. Supp. 3d ---, 2025 WL 2374411, at *5-8 (D. Minn. Aug. 15, 2025); *Lopez Benitez v. Francis*, -- F. Supp. 3d --, 2025 WL 2371588 (S.D.N.Y. Aug. 8, 2025); *Martinez v. Hyde*, 2025 WL 2084238 (D. Mass. July 24, 2025).

37. Notwithstanding the resounding rejection of DHS and DOJ's policy, Respondents continue to defend the policy, as well as the practice of invoking the automatic stay in cases involving this issue. Yet this

policy deprives Mr. Gutierrez of any process by subjecting him—without significant criminal history and with many years' residence in the United States—to the same mandatory detention provisions as applicants at the border seeking to initially enter the United States.

CLAIMS FOR RELIEF

COUNT ONE
Violation of Substantive Due Process
Arbitrary Detention; 8 U.S.C. §§ 1225 and 1226

38. Mr. Gutierrez realleges and incorporates by reference the paragraphs above.

39. 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). Indeed, the liberty interest in freedom from detention "is the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004).

40. The "Fifth and Fourteenth Amendments' guarantee of 'due process of law' [] include[s] a substantive component, which forbids the government to infringe certain 'fundamental' liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest." *Reno v. Flores*, 507 U.S.

292, 301-02 (1993) (emphasis in original). Substantive due process "prevents the government from engaging in conduct that shocks the conscience, or interferes with rights implicit in the concept of ordered liberty." *United States v. Salerno*, 481 U.S. 739, 746 (1987).

41. The substantive due process right to be free from arbitrary detention extends to noncitizens detained during removal proceedings, and indeed even those who have already been ordered removed from the United States on account of past criminal violations. *Zadvydas*, 533 U.S. at 690 (permitting detention in non-punitive circumstances only where "special justification . . . outweighs the individual's constitutionally protected interest in avoiding physical restraint.").

42. As a person living within the United States for many years, Mr. Gutierrez is entitled to due process of law. U.S. Const. amend. V; *see generally Zadvydas*, 533 U.S. at 693.

43. Mr. Gutierrez has a fundamental interest in liberty and being free from official restraint, and the government's new, erroneous classification of him as an "arriving alien" who is "seeking admission" to the United States and thus subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) without any avenue to challenge that detention violates his substantive right to due process.

COUNT TWO
Violation of Procedural Due Process
Arbitrary Detention; 8 U.S.C. §§ 1225 and 1226

44. Mr. Gutierrez realleges and incorporates by reference the paragraphs above.

45. The Supreme Court has been clear that for noncitizens "*on the threshold of initial entry* . . . [w]hatever the procedure authorized by Congress is, it is due process." *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) (emphasis added). However, Mr. Gutierrez—after many years in the United States—is clearly not on the threshold of initial entry. Indeed, it is well established that noncitizens like Mr. Gutierrez who "once passed through our gates, even illegally" are entitled to greater constitutional protections. *Id.*; *see also Zadvydas*, 553 U.S. at 693 ("It is well established that certain constitutional protections available to persons inside the United States are unavailable to [noncitizens] outside of our geographic borders."). "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). Thus, even if the Government were to argue that Mr. Gutierrez is properly detained under § 1225(b)(2)—which he is not—his detention does not comply with due process.

46. Mr. Gutierrez has a strong private interest in remaining free from detention. Indeed, the Supreme Court has affirmed that even for noncitizens, "[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690. And the Supreme Court, recognizing the strong private interest in remaining free from detention, has held "that detention violates that Clause unless the detention is ordered in a criminal proceeding with adequate procedural protections, or, in certain special and narrow non-punitive circumstances where a special justification, such as harm-threatening mental illness, outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Id.* (cleaned up).

47. While the government has an interest in ensuring Mr. Gutierrez's appearance at his removal proceedings and protecting the community, *see id.*, the bond procedures established under § 1226(a) adequately serve both interests by allowing an immigration judge to make an individualized assessment of a noncitizen's flight risk and the danger he may pose to the community. And the government cannot plausibly justify denying a bond hearing based on "administrative burdens" when it has, for the past three decades, consistently provided bond hearings to

noncitizens like Mr. Gutierrez who have established a presence in the United States after previously entering without inspection.

48. Finally, this case demonstrates the high risk of erroneous deprivation that would result from allowing DHS to detain noncitizens like Mr. Gutierrez without any opportunity to challenge his detention before the administrative agency. Without a bond hearing, there is a high probability that Mr. Gutierrez would be detained even though his continued detention serves no non-punitive purpose as it is unnecessary to protect the community or to ensure his appearance at his removal proceedings.

49. In Respondents' contrasting version of the INA, as espoused in *Matter of Yajure Hurtado*, Mr. Gutierrez may be stripped of any mechanism to require the government to justify his detention. Such a lack of *any* process, necessarily leading to an erroneous deprivation of liberty, cannot be supported by the Constitution.

COUNT THREE
Violation of the Immigration and Nationality Act Arbitrary Detention; 8 U.S.C. §§ 1225 and 1226

50. Mr. Gutierrez realleges and incorporates by reference the paragraphs above.

51. This Court should rule that Mr. Gutierrez is subject to detention under § 1226(a). Respondents' contrary reading of the statute has been

overwhelmingly rejected in more than two hundred district court decisions that have ruled on the issue.

52. As the Supreme Court recognized in *Jennings*, § 1225(b) focuses on individuals arriving at the border and ports of entry and thus are in the process of "seeking admission." *Jennings*, 583 U.S. at 297, 303; *see also* 8 C.F.R. § 1.2 (addressing noncitizens who are geographically "coming or attempting to come into the United States."). Conversely, § 1226(a) focuses on individuals who are in the United States and the Government is seeking to remove through removal proceedings. *Id.* at 303. The INA further clarifies that the term "application for admission" has "reference to the application for admission into the United States," making clear that the term applies to those applying to enter into the United States physically. 8 U.S.C. § 1101(a)(4). Mr. Gutierrez cannot reasonably be described as "seeking admission" to a country he has resided in for more than ten years.

53. The titles of the two statutory sections make this distinction clear. *Compare* 8 U.S.C. § 1225 (titled "Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing"), *with* 8 U.S.C. § 1226 ("Apprehension and detention of aliens").

54. Furthermore, equating the term "applicant for admission" with "seeking admission," as EOIR has concluded in *Matter of Yajure*

Hurtado, would render the phrase "seeking admission" superfluous because it violates principle that Congress is presumed to have acted intentionally in choosing different words in a statute, such that different words and phrases should be accorded different meanings." *Lopez Benitez*, 2025 WL 2371588, at *6; *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) ("[N]o clause, sentence, or word shall be superfluous, void, or insignificant."); *accord Martinez*, 2025 WL 2084238, at *2; *Mendoza Gutierrez*, 2025 WL 2962908, at *7.

55. Section 1225's mandatory detention regime applies to noncitizens who meet three criteria; first, the noncitizen must be "an 'applicant for admission' (a 'term of art' in the INA that includes noncitizens who 'arrive[] in the United States,' as well as those already 'present in the United States who ha[ve] not been admitted"); second, the noncitizen must be "actively 'seeking admission' to the country"; and third, the noncitizen must be "one whom an examining immigration officer determines 'is not clearly and beyond a doubt entitled to be admitted.'" *Lopez Benitez*, 2025 WL 2371588, at *6 (quoting *Martinez*, 2025 WL 2084238, at *2).

56. "Respondents' reading of § 1225(b)(2)(A) 'negates the plain meaning of the text.'" *Id.* (quoting *Martinez*, 2025 WL 2084238, at *6). The phrase "seeking admission," is in the present tense, connoting a

current action. Yet, Mr. Gutierrez was not actively seeking admission when DHS apprehended him and placed him in custody; he "ha[d] already 'entered' the country (albeit unlawfully)." *Id.*

57. Similarly, the ordinary meaning of the terms "seeking" and "admission" do not apply to noncitizens, like Mr. Gutierrez, who are not actively seeking inspection to enter the United States but instead have been residing in the country for many years. *Lopez Benitez*, 2025 WL 2371588; *Jose Alejandro v. Olson*, 2025 WL 2896348 (S.D. Ind. Oct. 11, 2025).

58. Additionally, applying § 1225(b)(2) to all noncitizens except those who have been admitted could not have been Congress's intent because it would render other mandatory detention provisions, such as § 1226(c)(1)(E), unnecessary. *Sampiao*, 2025 WL 2607924, at *8; *Rodriguez Vasquez*, 779 F. Supp. 3d at 1259; *Gomes*, 2025 WL 1869299, at *7. Section 1225(c) requires mandatory detention for individuals who are present in the United States without being admitted or paroled and who are subject to specific criminal conduct criteria. *Sampiao*, 2025 WL 2607924, at *8.

59. If all noncitizens who are inadmissible are subject to mandatory detention, there would be no reason for Congress to have enumerated which inadmissible noncitizens are subject to mandatory detention

under § 1226(c). *Id.* If Congress intended § 1225(b) detention to extend to all noncitizens who have not been admitted, the recent amendments would be surplusage. *Sampiao*, 2025 WL 2607924, at *8 (citing *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 386 (2013) ("The canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme.").

60. For these reasons, the plain language of § 1225(b)(2)(A) demonstrate that an individual, such as Mr. Gutierrez, is not an "applicant for admission" who is "seeking admission" to the United States.

61. Thus, this Court must find that to subject Mr. Gutierrez to mandatory detention under 8 U.S.C.§ 1225(b)(2)(A) would be a clear violation of the INA.

PRAYER FOR RELIEF

Based on the foregoing, Mr. Gutierrez requests that this Court:

(1) Assume jurisdiction over the matter;

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

(3) Declare that 8 U.S.C. § 1226(a) governs Mr. Gutierrez's detention by U.S. immigration authorities;

(4) Order that Mr. Gutierrez be released from immigration custody or, alternatively, afforded a bond hearing as authorized under 8 U.S.C. § 1226(a) at which 8 U.S.C. § 1225(b)(2)(A) cannot be applied, DHS bears the burden of proof, and the immigration judge consider his ability to pay bond as part of the factors in setting bond; and

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

Dated: November 13, 2025

Respectfully submitted,

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Counsel for Petitioner

VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF PURSUAN TO 28 U.S.C. § 2242

I am submitting this verification on behalf of the Petitioner because I am Petitioner's attorney. I or my legal assistants have discussed with Petitioner and/or his family the events described in this Petition. Based on those discussions and documents Petitioner's family has provided to me, I hereby verify that the statements made in this Petition for a Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: November 13, 2025

Respectfully submitted,

/s/ Sarah L. Vuong

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