

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

TOMAS ALFREDO MACARIO MORALES,

Petitioner,

v.

JOHN DOE, in his capacity as Warden of Camp East Montana Detention Facility; MARISA FLORES, in her official capacity as Acting Field Office Director, El Paso Field Office, Enforcement and Removal Operations, U.S. Immigration & Customs Enforcement; TODD LYONS, in his official capacity as Acting Director U.S. Immigrations and Customs Enforcement; KRISTI NOEM, in her official capacity as U.S. Secretary of Homeland Security; PAMELA BONDI, in her official capacity as Attorney General of the U.S.; SIRCE E. OWEN, in her official capacity as Acting Director of the Executive Office for Immigration Review; U.S. DEPARTMENT OF HOMELAND SECURITY; U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; U.S. DEPARTMENT OF JUSTICE; and U.S. EXECUTIVE OFFICE FOR IMMIGRATION REVIEW,

Respondents.

Case No. 3:25-cv-00546

**VERIFIED PETITION
FOR WRITS OF
HABEAS CORPUS
AND COMPLAINT**

INTRODUCTION

1. This case concerns the illegal detention of Petitioner Tomas Alfredo Macario Morales, a citizen of Guatemala who has lived in the United States since entering without inspection in 2022. Mr. Macario Morales, who is a member of the long-persecuted K'iche' people, fled Guatemala after being repeatedly assaulted and threatened with knives and guns. Mr. Macario Morales has no criminal history and had never been arrested prior to his detention by Respondents and their agents on August 19, 2025.

2. On that day, masked, anonymous agents working for Respondent U.S. Immigration and Customs Enforcement (“ICE”) surrounded a car in which Mr. Macario Morales was travelling with a friend and a real estate agent—both of whom also appear Hispanic—and arrested all three of them.

3. Since the arrest, Mr. Macario Morales has been detained in appalling conditions at a series of ICE-affiliated prisons.

4. Mr. Macario Morales is in full removal proceedings in immigration court. At a master calendar hearing on September 18, 2025, Mr. Macario Morales was prevented from requesting a bond hearing. Before his attorney could request one, the immigration judge refused to conduct a hearing, stating that Mr. Macario Morales is not eligible for bond. That statement necessarily relied on *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), which—in a reversal of Respondents’ longstanding position—held that all noncitizens who entered the United States without inspection at any time are subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A).

5. As countless courts—including courts in this District and elsewhere in the Fifth Circuit—have already held, *Matter of Yajure Hurtado* is inconsistent with the text of the Immigration and Nationality Act (“INA”). Absent special circumstances not present here, noncitizens arrested while already present in the country may be detained only under 8 U.S.C. § 1226(a). And noncitizens detained under that provision are eligible for bond.

6. Mr. Macario Morales is currently detained at the prison tent camp called “Camp East Montana” on the grounds of Fort Bliss. He remains in removal proceedings before the El Paso Service Processing Center, located in El Paso, Texas.

7. Mr. Macario Morales’s continued detention is causing him immense harm. Mr. Macario Morales has a history of suicidal ideation and struggles with depression and anxiety in

detention. He has also suffered from several physical health issues. But Respondents have not given him medical attention despite his repeated requests.

8. Mr. Macario Morales fears he will be wrongly removed to Guatemala, the country from which he intends to seek asylum.

9. To remedy his wrongful detention, Mr. Macario Morales respectfully asks this Court to issue a writ of habeas corpus and order his release unless Respondents provide him with a bond hearing under 8 U.S.C. § 1226(a) within five days.

PARTIES

10. Petitioner Tomas Alfredo Macario Morales is a Guatemalan national who has resided in the United States since 2022. He has been in ICE custody since August 19, 2025, and he is currently imprisoned at Camp East Montana Detention Facility, located at 6920 Digital Rd., El Paso, Texas, 79936. After arresting Mr. Macario Morales, ICE did not set bond, and Mr. Macario Morales is unable to obtain review of his custody by an immigration judge under the BIA's decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

11. Respondent John Doe is sued in his official capacity as Warden of Camp East Montana Detention Facility, where Mr. Macario Morales is detained. Respondent John Doe is a legal custodian of Mr. Macario Morales. Mr. Macario Morales will update the Court on the name of the warden when such information becomes available.

12. Respondent Marisa Flores is sued in her official capacity as Acting Field Office Director, El Paso Field Office, Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement, which has jurisdiction over Camp East Montana Detention Facility in El Paso, Texas. Respondent Flores is a legal custodian of Mr. Macario Morales.

13. Respondent Todd Lyons is sued in his official capacity as Acting Director of U.S. Immigrations and Customs Enforcement. In that capacity, Respondent Lyons is a legal custodian of Mr. Macario Morales.

14. Respondent Kristi Noem is sued in her official capacity as Secretary of Homeland Security. As the head of the Department of Homeland Security, the agency tasked with enforcing immigration laws, Respondent Noem is Mr. Macario Morales's ultimate legal custodian.

15. Respondent Pam Bondi is sued in her official capacity as Attorney General of the United States. As head of the U.S. Department of Justice, the agency that oversees the Executive Office for Immigration Review, Respondent Bondi is responsible for administration of the immigration laws as exercised by EOIR and is legally responsible for the pursuit of Petitioner's detention and removal. She is a legal custodian of Mr. Macario Morales.

16. Respondent Sirce E. Owen is sued in her official capacity as Acting Director of the Executive Office for Immigration Review. In that capacity, Respondent Owens is responsible for administration of immigration laws pursuant to 8 U.S.C. § 1103(g) and is legally responsible for the pursuit of Petitioners' detention and removal.

17. Respondent Department of Homeland Security is the federal agency responsible for implementing and enforcing many provisions of the INA, including those involving the detention and physical removal of noncitizens.

18. Respondent Immigration and Customs Enforcement is the agency within DHS responsible for the detention and physical removal of noncitizens.

19. Respondent Executive Office for Immigration Review is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including in bond hearings.

JURISDICTION AND VENUE

20. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 2241 (habeas corpus); and the Suspension Clause, U.S. Const. art. I, § 9, cl. 2.

21. Federal district courts have jurisdiction to hear habeas claims by noncitizens challenging both the lawfulness and the constitutionality of their detention. *See Demore v. Kim*, 538 U.S. 510, 516-17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

22. Venue is proper in the Western District of Texas under 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to the claims in this action took place in this District and because Defendant Flores resides in this District. Venue is also proper under 28 U.S.C. § 2241(d) and Rule CV-3(b)(3) of the local rules of the Western District of Texas because Mr. Macario Morales is detained at a facility within this District and because his immediate physical custodian is located in this District. *See* L.R. CV-3(b)(3).

EXHAUSTION OF REMEDIES

23. 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).

24. Even if exhaustion were generally required, it would not be required in this case for three reasons. *First*, Mr. Macario Morales raises constitutional and statutory challenges to his detention, and neither type of claim requires exhaustion. *See Petgrave v. Aleman*, 529 F. Supp. 3d 665, 672 n. 14 (S.D. Tex. 2021) (constitutional claims); *Pizarro Reyes v. Raycraft*, 2025 WL 2609425, at *3 (E.D. Mich. Sept. 9, 2025) (citing *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 385 (2024)) (statutory claims).

25. *Second*, the Supreme Court has recognized that exhaustion is unnecessary where, as here, detention is causing the petitioner irreparable harm. *See McCarthy v. Madigan*, 503 U.S. 140, 147 (1992); pp. 46-47, *infra*.

26. *Third*, exhaustion would be futile. Under the BIA's decision in *Matter of Yajure Hurtado*, immigration judges do not grant bond or release requests for noncitizens designated as being present in the United States without admission. *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). An immigration judge has already refused to consider Mr. Macario Morales's request for bond for that reason.

STATEMENT OF FACTS

27. Petitioner Tomas Alfredo Macario Morales entered the United States without inspection in October 2022.

28. Mr. Macario Morales has lived in the United States since then. Mr. Macario Morales is a well-loved member of his community in Brooklyn, New York. Prior to his unlawful arrest and detention by federal agents on August 19, 2025, he had never been arrested or charged with a crime in any country.

29. Mr. Macario Morales intends to apply for asylum in the United States on grounds including his K'iche' ancestry and the prior assaults and serious threats he received in Guatemala.

30. Mr. Macario Morales is neither a flight risk nor a danger to his community.

31. On August 19, 2025, Mr. Macario Morales was touring apartments with a realtor and friend in Brooklyn, New York. All three individuals are Hispanic. After they toured the last apartment, the realtor offered Mr. Macario Morales and his friend a ride home, which they accepted.

32. As Mr. Macario, his friend, and the realtor left the apartment building, three large SUVs pulled out of parking spaces and started to follow their car. The vehicles followed them for two blocks and then turned on lights and sirens. The realtor, who was driving, immediately pulled over. He had committed no discernable traffic violations.

33. Eight armed people—almost all masked to cover their faces—wearing vests labeled “FBI” and “DEA” exited the SUVs and surrounded the car. These ambushers never provided identification to show that they were, in fact, FBI and DEA agents. The entire time, Mr. Macario Morales was terrified that these masked agents would hurt him.

34. The realtor rolled down the driver’s side window, and the anonymous masked agents berated him for not pulling over fast enough and demanded to see his driver’s license. The realtor asked why they had been stopped, but the masked agents did not answer. Finally, after being asked several times, one of the anonymous agents stated that they had received a call about suspicious people and that the car itself was suspicious. The car was a family van, with a visible car seat inside -.

35. After demanding the driver’s identification, the masked people in FBI and DEA vests demanded that Mr. Macario Morales and his friend hand over their identification. Some of them had their hands on their guns when they did this. They did not allow Mr. Macario Morales or his friend to ask questions. During this time, Mr. Macario Morales watched as they handcuffed and arrested the realtor.

36. Mr. Macario Morales asked why he needed to turn over his identification if he was not driving. The masked agents refused to answer him. Mr. Macario Morales’s friend turned over his identification after further yelling and intimidation. The masked agents further berated Mr. Macario Morales and blocked the doors of the car, preventing him from getting out. Mr. Macario

Morales turned over his identification because he was afraid of being physically assaulted if he did not do so. The masked agents did not return it.

37. The masked agents then demanded that Mr. Macario Morales and his friend exit the car. His friend did so and was immediately arrested. The masked people continued screaming at Mr. Macario Morales, demanding that he get out of the car and tell them why he was there, where he had come from, and his immigration status. Mr. Macario Morales asserted his right to remain silent.

38. The anonymous, masked agents then told Mr. Macario Morales that he would be arrested on the basis of his immigration status, claiming he was in the United States “illegally.” They then mocked Mr. Macario Morales’s English and claimed that the realtor had told them Mr. Macario Morales was in the United States “illegally.” The realtor, however, did not know Mr. Macario Morales’s immigration status.

39. After Mr. Macario Morales did not exit the car fast enough for the masked agents’ liking, one agent opened the car door and another dragged him out of the car by force. Mr. Macario Morales did not resist, because he feared for his life. One of the masked agents handcuffed him. The agents placed Mr. Macario Morales in a separate vehicle from the realtor and his friend and drove away.

40. Once they had been driving for some time, the masked agents told Mr. Macario Morales for the first time that they were working for ICE. Mr. Macario Morales still does not know whether the people who arrested him were disguised ICE agents or masked agents from other federal agencies carrying out the functions of ICE agents.

41. The agents took Mr. Macario Morales to a federal building in Manhattan that houses an immigration court and imprisoned him there. During his detention, the agents told Mr.

Macario Morales that he was required to sign a Notice to Appear in immigration court and implied that he would never be allowed to leave detention if he did not do so. He signed the Notice to Appear. The agents did not inform Mr. Macario Morales that he had a right to contact an attorney.

42. At the Federal Building, DHS issued a Notice to Appear to Mr. Macario Morales. That notice alleges that he is a “[noncitizen] present in the United States who has not been admitted or paroled.” The notice further alleges that Mr. Macario Morales is not a citizen or national of the United States, is a citizen of Guatemala, and entered the United States on an unknown date and at an unknown place.

43. After about two days, agents transferred Mr. Macario Morales to a local jail on Long Island. During the transfer, Mr. Macario Morales’s hands and feet were handcuffed and connected to a chain around his waist. At the local jail, officers placed Mr. Macario Morales in solitary confinement for two days and did not allow Mr. Macario Morales to make any phone calls.

44. On or about August 23, 2025, the government transferred Mr. Macario Morales to the El Paso Enhanced Hardened Facility, an ICE facility in El Paso, Texas. The transfer took approximately 18 hours because of mechanical issues with the plane. Throughout the entire 18 hours, Mr. Macario Morales and around 100 other people on the plane remained handcuffed.

45. A few days after ICE transferred Mr. Macario Morales to El Paso, they moved him to the Camp East Montana Detention Facility at Fort Bliss. He remains imprisoned there.

46. The government has subjected Mr. Macario Morales to inhumane conditions at each of the detention facilities. Every facility served rotten, moldy, or otherwise inedible food. At the local Long Island jail, Mr. Macario Morales was permitted to leave his cell only for 30 minutes each day while he was held in solitary confinement. At both the Federal Building in Manhattan and at the El Paso Enhanced Hardened Facility, Respondents put Mr. Macario Morales into cells

so crowded that people were forced to sleep on the floor. And at the Camp East Montana Detention Facility, DHS has detained Mr. Macario Morales in a tent with about 70 people and only six bathrooms. The toilets regularly overflow, and the tent often smells of raw sewage.

47. Mr. Macario Morales's detention is causing him significant harm. Mr. Macario Morales has a history of suicidal ideation. Since Respondents arrested and detained him, he has struggled with depression and anxiety. Physically, he is losing weight and feels weak, and the food Respondents serve has caused him to vomit and has left him ill for days on end. Mr. Macario Morales also had symptoms consistent with strep throat and a sprained ankle. He has not seen a medical professional despite repeated requests.

48. On September 18, 2025, Mr. Macario Morales attended a master calendar hearing before the immigration court in El Paso. At that hearing, the immigration judge denied Mr. Macario Morales an opportunity to move for bond. The immigration judge stated that Mr. Macario Morales was ineligible for bond.

49. Mr. Macario Morales's next master calendar hearing is scheduled for November 17, 2025. Mr. Macario Morales intends to apply for asylum, but there is no timetable for an immigration court hearing on that application. Absent the Court's intervention, Mr. Macario Morales will remain detained indefinitely, until whenever his removal proceedings conclude.

LEGAL BACKGROUND

50. The INA provides two different sources of detention authority relevant to this case. *First*, 8 U.S.C. § 1226(a) authorizes the detention of noncitizens who are in full removal proceedings in immigration court. Unless they have been convicted of certain crimes (and Mr. Macario Morales has not), noncitizens detained under § 1226(a) are entitled to a bond hearing. *See* 8 U.S.C. § 1226(a), (c); 8 C.F.R. §§ 1003.19(a), 1236.1(d).

51. *Second*, 8 U.S.C. § 1225(b)(2) governs the detention of recently arrived noncitizens who are “applicant[s] for admission” and who are “seeking admission” but not “clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(a)(3), (b)(2)(A).¹ The courts have held that detention under § 1225(b)(2) is mandatory. *Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018); *see Maldonado v. Macias*, 150 F. Supp. 3d 788 (W.D. Tex. 2015).

52. Congress enacted both § 1226(a) and § 1225(b)(2) in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585 (“IIRIRA”).

53. Before IIRIRA, most people detained within the United States—even those who entered without inspection—were entitled to a custody hearing, while people apprehended at the border were only eligible for release on parole. *See* 8 U.S.C. § 1252(a) (1994).

54. Congress explained when passing IIRIRA that § 1226(a) “restates the current provisions in section [1252(a)] regarding the authority of the Attorney General to arrest, detain, and release on bond [a noncitizen] who is not lawfully in the United States.” H.R. Rep. No. 104-469, pt. 1, at 229 (1996).

55. When EOIR issued regulations implementing IIRIRA in 1997, it explained that “despite being applicants for admission, [noncitizens] who are present without having been admitted or paroled ... will be eligible for bond and bond redetermination.” 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

56. For decades after Congress passed IIRIRA, Respondents treated § 1225(b)(2) as applying to noncitizens apprehended at or near the border and § 1226(a) as applying to

¹ The detention provisions of 8 U.S.C. § 1225(b)(1) and 8 U.S.C. § 1231(a), which respectively cover noncitizens placed in expedited removal and noncitizens with final orders of removal, are not germane here.

noncitizens “who [were] already present in the United States” when detained. *Lopez Santos v. Noem*, 2025 WL 2642278, at *4 (W.D. La. Sept. 11, 2025); (citing *Jennings*, 583 U.S. at 303).

57. Thus, for decades, noncitizens arrested while already present in the United States were entitled to bond hearings unless their criminal history made them ineligible for bond under § 1226(c).

58. Respondents have radically departed from this longstanding interpretation of the INA in recent months. In July 2025, ICE—“in coordination with” DOJ—announced as a categorical new policy the view that any noncitizen who entered the United States without inspection at any point in time is subject to mandatory detention under § 1225(b)(2). See ICE, *Interim Guidance Regarding Detention Authority for Applications for Admission*.²

59. On September 5, 2025, the BIA parroted this novel interpretation in a published decision, *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). There, the BIA asserted that, “under the plain reading of the INA,” noncitizens “who are present in the United States without admission are applicants for admission as defined under” § 1225(b)(2)(A). *Id.* at 220. On that basis, the BIA held that all noncitizens who are present in the United States without admission are subject to mandatory detention under § 1225(b)(2)(A) and are ineligible for bond hearings. *Id.* at 216.

60. Federal courts do not owe deference to agency interpretation of statutes. Rather, they exercise “independent legal judgment” to interpret statutes. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 401 (2024). Thus, while the immigration judge who denied a bond hearing to Mr. Macario Morales was bound by the BIA’s interpretation in *Matter of Yajure Hurtado*, this Court is not. See *Pizarro Reyes*, 2025 WL 2609425, at *6 (citing *Loper Bright*, 603 U.S. at 413).

² Available at <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>.

61. Dozens of federal courts, including courts in the Fifth Circuit, have already rejected Respondents' newfound interpretation of § 1225(b)(2) and have ordered Respondents to conduct bond hearings for noncitizens detained under the interpretation in *Yajure Hurtado*. See, e.g., *Lopez-Arevelo v. Ripa*, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Santiago v. Noem*, 2025 WL 2792588 (W.D. Tex. Oct. 2, 2025); *Vieira v. De Anda-Ybarra*, 2025 WL 2937880, (W.D. Tex. Oct. 16, 2025); *Gonzalez Martinez v. Noem et al.*, 2025 WL 2965859, (W.D. Tex. Oct. 21, 2025); *Hernandez-Fernandez v. Lyons et al.*, 2025 WL 2976923 (W.D. Tex. Oct. 21, 2025); *Gomes v. Hyde*, 2025 WL 1869299 (D. Mass. July 7, 2025); *Lopez Benitez v. Francis*, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Rivera Zumba v. Bondi*, 2025 WL 2753496 (D.N.J. Sept. 26, 2025); *Leal-Hernandez v. Noem*, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Lopez Santos v. Noem*, 2025 WL 2642278 (W.D. La. Sept. 11, 2025); *Pizarro Reyes v. Raycraft*, 2025 WL 2609425, at *6 (E.D. Mich. Sept. 9, 2025); *Campos Leon v. Forestal*, 2025 WL 2694763 (S.D. Ind. Sept. 22, 2025); *Barrajas v. Noem*, 2025 WL 2717650 (S.D. Iowa Sept. 23, 2025); *Belsai D.S. v. Bondi*, 2025 WL 2802947 (D. Minn. Oct. 1, 2025); *Giron Reyes v. Lyons*, 2025 WL 2712427 (N.D. Iowa Sept. 23, 2025); *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025); *Salazar v. Dedos*, 2025 WL 2676729 (D.N.M. Sept. 17, 2025); *Lopez v. Hardin*, 2025 WL 2732717 (M.D. Fla. Sept. 25, 2025).

62. These courts have uniformly recognized that Respondents' new interpretation is contrary to the text of the INA. The statutory text instead hews to Respondents' previous, longstanding interpretation that § 1225(b)(2) applies to noncitizens "who are seeking entry into the United States," while § 1226(a) applies to noncitizens "who are already present in the United States." *Lopez Santos*, 2025 WL 2642278, at *4; accord, e.g., *Jennings*, 583 U.S. at 297, 303.

Indeed, “our immigration laws have long made a distinction between those [noncitizens] who have come to our shores seeking admission . . . and those who are within the United States after an entry, irrespective of its legality.” *Martinez v. Hyde*, 2025 WL 2084238, at *8 (D. Mass. July 24, 2025) (quoting *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958)).

63. Section 1226(a) applies by default to all persons “pending a decision on whether the [noncitizen] is to be removed from the United States.” Such decisions are made in removal proceedings in immigration court. *See* 8 U.S.C. § 1229a(a)(1).

64. The text of § 1226 explicitly applies to people charged with being inadmissible, including those who entered without inspection. Just this year, Congress enacted 8 U.S.C. § 1226(c)(1)(E), which states that people who are “inadmissible under” 8 U.S.C. § 1182(a)(6)(A) because they entered without inspection are subject to mandatory detention if they are charged with, arrested for, or convicted of certain crimes. *Id.*; *see* Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025). Congress would not have included that provision in § 1226 unless some noncitizens who entered without inspection could otherwise be eligible for bond. Indeed, on Respondents’ new reading of the INA, § 1226(c)(1)(E) does nothing at all, because everyone who enters without exception is subject to mandatory detention notwithstanding their criminal history.

65. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. The section’s title refers to “inadmissible *arriving* [noncitizens].” 8 U.S.C. § 1225 (emphasis added). As several courts have noted, the word “arriving” indicates that the statute governs ‘arriving’ noncitizens, not those present already.” *Barrera v. Tindall*, 2025 WL 2690565, at *4 (W.D. Ky. Sept. 19, 2025) (citing *Pizarro Reyes*, 2025 WL 2609425, at *5).

66. Furthermore, the text of § 1225 repeatedly refers to “inspections” and that term is generally understood to refer to determinations of admissibility made at the time of entry. *See* 8 U.S.C. § 1225(a)(1) (Inspection of noncitizens who are applicants for admission); *Vieira v. De Anda-Ybarra*, 2025 WL 2937880, at *5 (discussing the well-established distinction between individuals seeking admission and those who have already effected entry); *see also* 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

67. Inspections, in other words, apply to people who have recently arrived in the United States.

68. The use of the present participle in the phrase “seeking admission” in § 1225(b)(2)(A) further demonstrates that its applicability does not extend to people already present in the United States. *See United States v. Wilson*, 503 U.S. 329, 333 (1992) (“Congress’ use of verb tense is significant in construing statutes.”). A present participle “denotes an ongoing process” that “necessarily implies some sort of present-tense action.” *Martinez*, 2025 WL 2084238, at *6 (quotation omitted). After all, “someone who enters a movie theater without purchasing a ticket and then proceeds to sit through the first few minutes of a film would not ordinarily then be described as ‘seeking admission’ to the theater.” *Lopez Benitez v. Francis*, 2025 WL 2371588, at *7 (S.D.N.Y. Aug. 13, 2025).

69. The regulations enacting § 1225(b)(2) similarly use the present participle to refer to “arriving [noncitizens].” 8 C.F.R. § 235.2(c). And the regulations define an “arriving” noncitizen as “an applicant for admission coming or attempting to come into the United States at a port-of-entry.” 8 C.F.R. § 1.2. A person who has been living in the United States for years after entering between ports of entry is not “coming or attempting to come into the United States at” a port of entry.

70. In short, the mandatory detention provision of § 1225(b)(2)(A) applies only to people arrested at or near the border. People who have been living in the United States for years, like Mr. Macario Morales, are instead detained under § 1226(a). And that section makes Mr. Macario Morales eligible for bond.

CLAIMS FOR RELIEF

COUNT ONE

Violation of the Immigration and Nationality Act, 8 U.S.C. §§ 1225 & 1226

71. Mr. Macario Morales realleges and incorporates by reference all of the allegations above as if set forth fully herein.

72. Noncitizens in removal proceedings who are detained while already present within the United States are subject to detention under § 1226(a) unless they are placed in expedited removal or have committed a crime that subjects them to detention under § 1226(c). In contrast, the mandatory detention provisions of 8 U.S.C. § 1225(b)(2) apply only to noncitizens seeking entry into the United States, not those already present in the country.

73. The continued application of § 1225(b)(2) to Mr. Macario Morales and Respondents' refusal to grant him a bond hearing violate the INA.

COUNT TWO

Violation of the Bond Regulations, 8 C.F.R. §§ 236.1, 1236.1 and 1003.19

74. Mr. Macario Morales realleges and incorporates by reference all of the allegations above as if set forth fully herein.

75. An administrative agency is required to adhere to its own regulations. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954); 8 U.S.C. § 1226(a)(2)(A); 8 C.F.R. §§ 236.1, 1236.1 and 1003.19.

76. Federal regulations require Respondents to grant bond hearings to noncitizens detained under § 1226(a), including noncitizens who entered without inspection and are detained while present in the United States, at the outset of their detention. 8 C.F.R. § 1236.1(d)(1); *see Jennings*, 583 U.S. at 306.

77. Nonetheless, Respondents now have a policy and practice, enshrined in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), of applying § 1225(b)(2) to all noncitizens who entered the United States without inspection at any time.

78. The continued application of § 1225(b)(2) to Mr. Macario Morales, resulting in his mandatory detention, violates Respondents' governing regulations.

COUNT THREE

Violation of the Due Process Clause of the Fifth Amendment to the United States Constitution (Substantive Due Process)

79. Mr. Macario Morales realleges and incorporates by reference all of the allegations above as if set forth fully herein.

80. The Fifth Amendment of the U.S. Constitution provides that “[n]o person” shall “be deprived of life, liberty, or property, without due process of law.”

81. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Moreover, “[t]he Due Process Clause applies to all ‘persons’ within the United States, including [noncitizens] whether their presence here is lawful, unlawful, temporary, or permanent.” *Id.* at 693.

82. The only permissible purposes of detention under § 1226(a)—preventing danger to the community and flight risks—are not present here.

83. Mr. Macario Morales's ongoing detention violates his substantive due process rights because his liberty is being restricted without justification. *See Demore v. Kim*, 538 U.S. at 549-50); *Zadvydas*, 533 U.S. at 690-91; *Hensley v. Mun. Ct., San Jose Milpitas Jud. Dist.*, 411 U.S. 345, 351 (1973); 28 U.S.C. § 2241(c)(3).

COUNT FOUR
Violation of the Due Process Clause of the Fifth Amendment (Procedural Due Process)

84. Mr. Macario Morales realleges and incorporates by reference all of the allegations above as if set forth fully herein.

85. "The essence of procedural due process is that a person risking a serious loss be given notice and an opportunity to be heard in a meaningful manner and at a meaningful time." *M.S.L. v. Bostock*, 2025 WL 2430267, at *8 (D. Or. Aug. 21, 2025). The government's infringement on Mr. Macario Morales's liberty interest thus triggers a procedural right under the Fifth Amendment to contest that infringement. *See Bd. of Regents of State Colleges v. Roth*, 408 U.S. 564, 569-70 (1972).

86. The sufficiency of a process is determined by weighing three factors: (i) the private interest that will be affected by the official action, (ii) the risk of erroneous deprivation of that interest through the available procedures, and (iii) the government's interest, including the function involved and the fiscal and administrative burdens that additional or substitute procedures would entail. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

87. Mr. Macario Morales has a due process right to a bond hearing because he can be properly detained only under a statute, 8 U.S.C. § 1226, that allows for release on bond but was denied any pre- or post-deprivation hearing.

88. Mr. Macario Morales's interest in his liberty from arbitrary imprisonment, and his ability to contest that imprisonment, is extremely significant.

89. Respondents' failure to grant an individualized hearing on whether Mr. Macario Morales's detention is justified to prevent flight or mitigate risk of danger to the community creates a high risk of erroneous deprivation of liberty. *See Zadvydas*, 533 U.S. at 690.

90. Respondents incur no additional burden by providing Mr. Macario Morales with a bond hearing, because doing so merely comports with both the requirements of the INA and the constitutional protections guaranteed by the Fifth Amendment.

91. For these reasons, Mr. Macario Morales's ongoing detention is unconstitutional.

PRAYER FOR RELIEF

WHEREFORE, the Petitioner respectfully requests that this Court:

- 1) Assume jurisdiction over this matter;
- 2) Order that Mr. Macario Morales not be transferred outside of the Western District of Texas while this habeas petition is pending;
- 3) Issue a Writ of Habeas Corpus ordering Respondents to immediately release the Petitioner from custody, or in the alternative, provide him with a bond hearing under 8 U.S.C. § 1226(a) within five days;
- 4) Declare that Mr. Macario Morales's detention is unlawful;
- 5) Award the Petitioner reasonable attorneys' fees and costs for this action under the Equal Access to Justice Act, 28 U.S.C. § 2414; and
- 6) Grant the Petitioner any further relief this Court deems just and proper.

November 14, 2025

Respectfully submitted,

/s/ Farha Rizvi
Farha Rizvi

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Attorney for Petitioner

VERIFICATION

I am submitting this verification on behalf of the Petitioner because I am one of the Petitioner's attorneys. I have discussed with the Petitioner the events described in this Petition and Complaint. On the basis of those discussions, I hereby verify that the statements made in this Petition and Complaint are true and correct to the best of my knowledge.

/s/ Farha Rizvi

Farha Rizvi

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