

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
LAREDO DIVISION

**Jose Francisco Vazquez-Jaime,** )  
 )  
 Petitioner, )  
 )  
 )  
 )  
 **Orlando Rodriguez,** Warden, Webb County )  
 Detention Center; )  
 **Juan Agudelo,** Field Office Director of Laredo )  
 Field Office, )  
 U.S. Immigration and Customs Enforcement; )  
 **Todd M. Lyons,** )  
 Director of United States Immigration and )  
 Customs Enforcement; )  
 **Kristi Lynn Noem,** )  
 Secretary of the U.S. Department of Homeland )  
 Security; )  
 And )  
 **Pam Bondi,** )  
 Attorney General of the United States, )  
 in their official capacities, )  
 )  
 Respondents )  
 )  
 \_\_\_\_\_ )

Case No. \_\_\_\_\_

**EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28  
U.S.C. §2241, AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

The Petitioner, Jose Francisco Vazquez-Jaime (“Mr. Vazquez Jaime”), respectfully petitions this Honorable Court for a Writ of Habeas Corpus to remedy Petitioner’s unlawful detention and attempted removal from the United States by Respondents, and states as follows:

**INTRODUCTION**

1. This is a Petition for a Writ of Habeas Corpus hereby filed on behalf of Mr. Vazquez Jaime seeking declaratory and injunctive relief to compel his immediate release from the

immigration jail where he has been held by the U.S. Department of Homeland Security (DHS) since being unlawfully re-detained on September 21, 2025, without first being provided a due process hearing to determine whether his re-incarceration is justified.

2. Petitioner must be released from custody unless and until DHS proves to a neutral adjudicator, by clear and convincing evidence, changed circumstances that would justify cancelling a bond that an Immigration Judge previously set, and that Petitioner is a flight risk or a danger to the community. DHS has not been able to do so. Due process requires the government to provide noncitizens with notice and a hearing prior to re-detention, and that re-detention, without prior notice, a showing of changed circumstances, or a meaningful opportunity to respond, does not satisfy the procedural requirements of the Fifth Amendment.

### **JURISDICTION**

This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*

3. This Court has jurisdiction over the present action pursuant to 28 U.S.C. § 1331, general federal question jurisdiction; 5 U.S.C. § 701 *et seq.*, All Writs Act; 28 U.S.C. § 2241 *et seq.*, habeas corpus; 28 U.S.C. § 2201, the Declaratory Judgment Act; Art. 1, § 9, Cl. 2 of the United States Constitution (Suspension Clause); Art. 3 of the United States Constitution, and the common law.

### **VENUE**

4. Venue is proper because Petitioner is detained at Webb County Detention Center in Laredo, Texas, which is within the jurisdiction of this District.

5. In addition, Venue is proper in this District because Respondents are officers, employees, or agencies of the United States and a substantial part of the events or omissions giving rise to her claims occurred in this District, and Petitioner resides in this District and no real property is involved in this action. 28 U.S.C. § 1391(e).

**REQUIREMENTS OF 28 U.S.C. § 2243**

6. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the respondents “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Court must require respondents to file a return “within *three days* unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.* (emphasis added).
7. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as “perhaps the most important writ known to the constitutional law of England, 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**

8. Petitioner is a Citizen of Mexico, who has a pending U-visa petition with USCIS since 2017. Petitioner has been granted Deferred Action on account of his U-Visa petition being deemed as prima facie eligible by USCIS in 2023. Petitioner is currently detained at Webb County Detention Center in Laredo, TX. He is in the custody, and under the direct control, of Respondents and their agents.
9. Respondent Orlando Rodriguez is the Warden of Webb County Detention Center, and he has immediate physical custody of Petitioner pursuant to the facility’s contract with U.S.

Immigration and Customs Enforcement to detain noncitizens and is a legal custodian of Petitioner. Respondent Rodriguez is a legal custodian of Petitioner.

10. Respondent Juan Agudelo is sued in his official capacity as the Field Office Director of the Laredo Field Office of U.S. Immigration and Customs Enforcement. Respondent Agudelo is a legal custodian of Petitioner and has authority to release him.
11. Respondent Todd M. Lyons is the Acting Director of U.S. Immigration and Customs Enforcement (ICE) and is named in his official capacity. Among other things, ICE is responsible for the administration and enforcement of immigration laws, including removal of noncitizens. In his official capacity as head of ICE, he is the legal custodian of Petitioner. He is also the author of the July 8, 2025, new guidelines for mandatory detention.
12. Respondent Kristi Lynn Noem is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security (DHS). In this capacity, Respondent Noem is responsible for the implementation and enforcement of the Immigration and Nationality Act, and oversees U.S. Immigration and Customs Enforcement, the component agency responsible for Petitioner's detention and custody. Respondent Noem is a legal custodian of Petitioner.
13. Respondent Pam Bondi is sued in her official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice (DOJ). In that capacity, she has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the BIA. Respondent Bondi is a legal custodian of Petitioner.

**STATEMENT OF FACTS**

14. Petitioner is a 40-year-old citizen of Mexico. He has been living in the United States since on or about 2002. He married his United States Citizen (USC) wife, Raquel Santos in 2016. He is the stepfather to her four USC children. In 2017, he filed a U-visa petition with USCIS after cooperating with law enforcement as a victim of a crime. His U-visa petition was given a bona fide determination, and he was considered prima facie eligible for U-visa status, and USCIS granted him Deferred Action as a result in 2023 for a period of four years. His Deferred Action is still valid and current until 2027. Petitioner has no criminal history.

**Original Removal Proceedings**

15. On August 10, 2017, Petitioner was detained by ICE and given a Notice To Appear (NTA) for Removal Proceedings. (Attachment A)
16. A Bond request was made on August 23, 2017.
17. On September 27, 2017, the presiding Immigration Judge granted Petitioner a Bond, and he was then released after payment of the bond. (Attachment B)
18. Petitioner's Removal proceedings continued until May 18, 2022, when his proceedings were dismissed after a motion for DHS was granted due to Prosecutorial Discretion.
19. To this date, Petitioner has not received his reimbursement of his bond paid for his previous removal proceedings that were terminated in 2022. (Attachment C)

**Second Removal Proceedings**

20. On September 21, 2025, Petitioner was re-detained at a CBP checkpoint, even with possession of his Employment Authorization card, Deferred Action category, that is valid until 2027 and gave him the ability to live and work in the United States. (Attachment D)

21. Petitioner was issued a Notice to Appear for Immigration Court and then eventually transferred to the Webb County Detention Center in Laredo, Texas. (Attachment E)
22. Petitioner remains separated from his family, including his USC wife and USC stepchildren.
23. Petitioner was not detained or arrested for the commission of any crime on September 21, 2025, and does not have any criminal record.
24. His circumstances have not changed since the dismissal of his removal proceedings in 2022 and his current re-detention.
25. They in fact have improved since 2022, due to USCIS' grant of deferred action given to him in 2023, as USCIS continues in the process of adjudicating his U-visa petition.

Representation By Undersigned Counsel in Removal Proceedings

26. On October 20, 2025, Undersigned Counsel entered her appearance in Petitioner's Secondary Removal Proceedings.
27. Petitioner had his first Master Hearing set for October 29, 2025, in the Laredo Immigration Court.
28. On October 27, 2025, Undersigned Counsel submitted a Motion to Terminate to the Immigration Court based on 8 CFR §1003.18(d)(1)(ii)(B)-(C), which allows for Discretionary Termination for noncitizens who are prima facie eligible for lawful status & a beneficiary of Deferred Action. (Group Attachment F)
29. The Immigration Court submitted an order for DHS and Petitioner, requesting legal briefing on the issue of Termination on October 28, 2025, at Noon. This was due before the hearing scheduled less than 24 hours later the following day, October 29, 2025, at 8:30AM. (Group Attachment F)

30. Undersigned Counsel submitted their legal brief on October 28, 2025. DHS did not submit a brief. (Group Attachment F)
31. On October 29, 2025, the Immigration Court set the next Master Hearing to November 18, 2025.
32. On October 29, 2025 at the Master Hearing, the Immigration Court ordered for Petitioner and DHS to submit the following by November 12, 2025: Supplemental Briefs to their positions on the motion to terminate, and for Petitioner to submit Written Pleadings on the removal case & File any applications for relief and required filing fees.
33. The Immigration Court was set to make a final determination on Petitioner's Motion to Terminate on November 18, 2025, following the supplemental briefs filed by both parties.
34. On November 6, 2025, DHS submitted a Brief in Opposition to Petitioner's Motion to Terminate.
35. On November 7, 2025, Undersigned Counsel submitted their Reply to DHS' Brief in Opposition to Petitioner's Motion to Terminate.
36. On November 7, 2025, Undersigned Counsel filed a Motion to extend deadline to file relief, time of master hearing, and in the alternative, extension to pay filing fee if needed post motion to terminate. (Group Attachment F)
37. On November 11, 2025, the Immigration Denied in Part and Granted in part, Undersigned Counsel's motion filed on November 7, 2025. The Court DENIED Petitioner's motion for termination. The Court GRANTED the request for an extension of time for one week, for the written pleadings and applications for relief to be submitted by Petitioner to the Immigration Court by November 17, 2025. (Group Attachment F)

**EXHAUSTION OF ADMINISTRATIVE REMEDIES**

38. Petitioner submits that he is not barred by principles of administrative exhaustion as he is challenging his ongoing detention as a violation of due process. See *Petgrave v. Aleman*, 529 F. Supp. 3d 665, 672 n 14 (S.D. Tex 2021)
39. Furthermore, on July 8, 2025, Immigrations and Customs Enforcement (ICE) implemented a new policy “Interim Guidance Regarding Detention Authority for Applicants for Admission.” See *Todd Lyons Interim ICE Guidance Regarding Detention Authority for Applicants for Admission*. ” July 8, 2025. Whereby they suddenly changed their application of immigration authority statutes to justify mandatory detention, switching to 8USC§1225, instead of 8 U.S.C. which has been applied since 1996. In addition, this new guidance labels all noncitizens as “applicants for admission” and makes no distinction if they are present in the country, or they or arriving in the United States. This new guidance contradicts established safeguards and establishes mandatory detention without a possibility of a bond.
40. In addition, rather than properly analyzing or interpreting this new guidance in light of the due process violations, on September 5, 2025 the Board of Immigration Appeals (BIA) issued a decision rubber stamping ICE’s guidance and depriving noncitizens of the opportunity to seek parole through ICE or a bond determination by an Immigration Judge who does not have jurisdiction to issue a bond under this mandatory detention scheme. *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). The BIA decision, which is binding precedent on immigration judges, held that immigration judges “lack authority to hear bond requests or to grant bond to aliens...who are present in the United States

without admission” and thus are subject to mandatory detention applying 8 U.S.C.

§1225(b)(2). *Id.*

41. Undersigned counsel also sought the possibility of a parole request with the local ICE-ERO office and was informed based on this recent guidance; they lack parole authority as well.
42. Therefore, Petitioner contends that the current erroneous interpretation by the BIA and continuous application of the ICE overreaching guidelines have deprived any meaningful opportunity for a request for parole from ICE or a bond redetermination from an Immigration Judge who does not have authority and thus there is no requirement to exhaust administration remedies as this exercise “will be a patently futile course of action.” *Gallegos -Hernandez v. United States*, 688 F. 3d 190, 194 (5<sup>th</sup> Cir. 2012 (quoting *Fuller v. Rich*, 11 F. 3d 61, 62 (5<sup>th</sup> Cir. 1994)
43. Furthermore, since Petitioner is not seeking a review of a final order of removal under 8 U.S.C. §1252(d)(1), we submit that exhaustion of administrative remedies is not required for this petition.

#### **SUBJECT MATTER JURISDICTION**

44. Petitioner asserts that this Honorable Court has subject matter jurisdiction to hear this case because he is challenging the statutory interpretation and application of the mandatory detention statute to his circumstances.
45. Out of an abundance of caution and to expedite matters, based on a review of recent similar habeas corpus cases, we anticipate the government may argue this court lacks subject matter jurisdiction and hereby submit the following distinguishable factors for this case.

46. This case is not subject to 8 U.S.C. § 1252(a)(5) as this particular provision only concerns challenges to “an order of removal” that is not applicable in this case. Therefore, in this case there is no final removal order, and a habeas petitioner’s “arrest and detention claims are independent of any future removal order”, thus § 1252(a)(5) does not preclude the district court’s hearing of these claims. *Medina v. U.S. Dep’t Homeland Security* No. 17-cv-218, 2017 WL 2954719, at \*15 (W.D. Wash. Mar. 14, 2017); accord *Jennings*, 583 U.S. at 320, 138 S.Ct. 830 (Thomas, J., concurring) (describing § 152(a)(5)’s narrow applicability to support a broader reading of a separate jurisdiction-channeling provision, § 1252(b)(9)).
47. Additionally, this court is not seeking jurisdiction based on 8 U.S.C. 1252(g), as that statute is triggered in challenges to “any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien.
48. However, the Supreme Court has “not interpret[ed] this language to sweep in any claim that can technically be said to ‘arise from’ the three listed actions of the Attorney General. Instead, [the Court has] read the language to refer to just those three specific actions themselves.” *Jennings*, 583 U.S. at 294, 138 S. Ct. 830 (citing *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482-83, 119 S. Ct. 936, 142 L.Ed. 2d 940 (1999)).
49. As stated in *Duarte*, § 1252(g) applies only “to protect from judicial intervention the Attorney General’s long-established discretion to decide whether and when to prosecute or adjudicate removal proceeding or to execute removal orders.” *Duarte*, 27 F. 4<sup>th</sup> at 1055 (quoting *Alvidres-Reyes v. Reno*, 180 F.3d 199, 201 (5<sup>th</sup> Cir. 1999)).

50. Therefore, the statute “does not bar courts from reviewing an alien detention order, because such an order, while intimately related to efforts to deport, is not itself a decision to “execute removal orders” and thus does not implicate section 1252(g).” *Cardoso v. Reno*, 216 F. 3d 512, 516-17 (5<sup>th</sup> Cir. 2000) (citation omitted); accord *Kong v. United States*, 62 F. 4<sup>th</sup> 608, 617-18 (1<sup>st</sup> Cir. 2023)(collecting cases).
51. In the case at bar, Petitioner is challenging his ongoing detention, and such claims are not barred by §1252(g) *See, eg. Lopez Santos v. Noem*, No. 25-cv-1193, 2025 WL 2642278, at \*2-3 (W.D. La. Sept. 11, 2025).
52. Another pertinent jurisdictional provision that must be distinguished is §1226(e) as it relates to claims brought by those challenging their immigration detention. “The Attorney General’s discretionary judgment regarding the application of this section shall not be subject to review. No court may set aside any action or decision by the Attorney General under this section regarding the detention of any alien or the revocation or denial of bond or parole.” 8 U.S.C. §1226(e).
53. The major distinction is that this section only shields the Attorney General’s discretionary detention decision, but it “does not preclude ‘challenges to the statutory framework that permits the alien’s detention without bail.’” *Jennings*, 583 U.S. at 295, 138 S. C. 830 (cleaned up)(quoting *Demore v. Kim*, 538 U.S. 510, 516, 123 S.Ct. 1708, 155 L.Ed.2d 724 (2003)); *see also Zadvydas v. Davis*, 533 U.S. 678, 688, 121 S. Ct. 2491, 150 L.Ed. 2d 653 (2001).
54. Therefore, the Court “retain[s] jurisdiction to review [a noncitizen’s] detention insofar as that detention presents constitutional issues, such as those raised in a habeas petition.” *Oyedule v. Chertoff*, 125 F. App’x 543, 546 (5<sup>th</sup> Cir. 2005); accord *Maldonado v. Macias*,

150 F. Supp. 3d 788, 794 (W.D. Tex. 2015) (*citing Baez v. Bureau of Imm. & Customs Enf't*, 150 F. App'x 311, 312 (5<sup>th</sup> Cir. 2005)).

**LEGAL FRAMEWORK**

**PETITIONER REQUESTS REVIEW OF DHS' STATUTORY AUTHORITY TO  
DETAIN PETITIONER UNDER 8 U.S.C. §1225(b)(2) instead of §1226(a)**

55. Petitioner had been previously placed in removal proceedings on August 10, 2017. He was issued a three-thousand-dollar bond on September 25, 2017, and his removal proceedings were subsequently terminated on May 18, 2022.
56. Petitioner had applied for a U visa as a victim of a crime, and the DHS trial attorney filed a motion to terminate proceedings based on prosecutorial discretion.
57. To date, DHS has not refunded the bond amount to Petitioner and there has not been any change on circumstances to require a subsequent re-apprehension.
58. Petitioner was detained as he attempted to cross the IH-35 checkpoint with his valid employment authorization card issued by USCIS.
59. Petitioner has been detained since September 21, 2025, and deprived of his liberty.
60. INA §235 provides the legal framework to process and inspect individuals who are seeking entry into the United States. This section is applied at the border or ports of entry and when an applicant is not allowed to be admitted, the alien shall be detained for a [removal]proceeding. The use of the word shall, makes it mandatory and may subject individuals to mandatory detention under §235(b)(2)(A). The only possible release from this kind of mandatory detention is if granted a parole by DHS under INA §212(d)(5). If an individual is properly detained under §235, there is no avenue for an immigration judge to determine a bond.

61. The definition of an “applicant for admission” includes persons present in the United States who have not formally requested or received permission to enter. *See Matter of Miguel Lemus-Losa*, 24 I&N Dec. 373 (BIA2007). Although these persons are deemed “applicants” they are not automatically categorized under §235(b) because the government must comply with the arrest and detention provisions of §287 and §236.
62. As stated above, Petitioner cannot be considered an “arriving alien” because he was not detained at or near a port of entry, he was not apprehended “arriving in” the United States or “shortly after” crossing the border.
63. Instead, he has been residing in the United States since on or about 2002.
64. In addition, he had already been in removal proceedings, placed on bond and that case was terminated.
65. There are established and significant temporal and geographic limits in order for DHS to apply INA§235.
66. For almost thirty years, DHS has charged aliens as applicants for admission only if they were apprehended within 14 days of entry and within 100 miles of the border, this group of people is subject to mandatory detention as an arriving alien under §235. *See also Department of Homeland Security v. Thuraissigiam*, 591 U.S. 121 (2020).
67. Therefore, the remaining noncitizens who are apprehended after fourteen days of entry or in the interior of the U.S. are subject to §236 of the INA and should not be subject to mandatory detention.
68. Section 235 does not encompass every arrest of a person; it is one of the options if the proximity to the border and other requirements are applicable.

69. By contrast, §287, which is part of the same scheme of enforcement, only allows warrantless arrests in narrow circumstances: if the officer sees the alien entering illegally, if the officer has probable cause to believe the alien is unlawfully present and likely to escape, or if the officer reasonably believes the alien committed a felony. *Matter of Mariscal-Hernandez*, 28 I&N Dec. 666 (BIA 2022), *Tejada-Mata v. INS*, 626 F. 2d 721, 725 (9<sup>th</sup> Cir. 1980).
70. Absent these particular circumstances, not all applicants for admission are subjected to a warrantless arrest and mandatory detention.
71. The overbroad and sudden shift by DHS in the application of INA section 235(b), now is subjecting all noncitizens nationwide to mandatory detention and denying basic due process regardless of the person's proximity to the border, length of stay in the U.S. or lack of criminal history.
72. This is a significant change that occurred on July 8, 2025, when Immigrations and Customs Enforcement (ICE) implemented a new policy "Interim Guidance Regarding Detention Authority for Applicants for Admission." See *Todd Lyons Interim ICE Guidance Regarding Detention Authority for Applicants for Admission*, July 8, 2025. Whereby they suddenly changed their application of immigration authority statutes to justify mandatory detention, switching their justification for mandatory detention, despite the lack of proximity to the border, and significantly expanding the constructive interpretation of "applicants for admission" to 8 USC§1225, instead of 8 U.S.C.1226, which has been applied since 1996.
73. To further rubber stamp DHS' innovative interpretation of "applicants for admission", on September 5, 2025, the BIA decided the *Yajure Hurtado* case and significantly departed

from the established agency interpretation of the law that had been followed since 1996 and had allowed for bond redetermination. *In re: Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). In the *Hurtado* decision, the BIA expanded their interpretation of arriving aliens and determined that immigration judges lack the authority to hear bond requests or grant bond to noncitizens who entered the United States without inspection and are now subject to mandatory detention. *Id.*

74. This new law made any requests for bond a futile exercise and have forced mandatory detention of non-citizens nationwide. Including people like Petitioner, who was re-arrested despite his pending USCIS applications.

75. A recent decision by the Western District of Texas analyzed a similar Writ of Habeas Corpus petition and provided a significant list of cases that support Petitioner's request.

*See Lopez Arevalo v. Ripa*, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025):

“In recent weeks, courts across the country have held that this new, expansive interpretation of mandatory detention under the INA is either incorrect or likely incorrect. *See Lopez-Campos v. Raycraft*, \_\_\_ F. Supp. 3d \_\_\_, n.5, 2025 WL 2496379, at \*8 n.5 (E.D. Mich. Aug. 29, 2025)(collecting twelve such decisions); see, e.g., *Jimenez v. FCI Berlin, Warden*, \_\_\_ F. Supp.3d \_\_\_, \_\_\_ & n.9, 2025 WL 2639390, at \*10 & n.9 (D.N.H. Sept. 8, 2025). That includes courts in the Fifth Circuit. *Lopez Santos*, 2025 WL 2642278, at \*5; *Kostak v. Trump*, No. 25-cv-1093, 2025 WL 2472136, at\*3 (W.D. La. Aug. 27, 2025)”

76. Recently, in the case of *Loper Bright*, the Supreme Court finally ended the Chevron deference doctrine. (*Loper Bright Enterprises v. Raimondo*, 603 U.S.369; 144 S. Ct. 2244; 219 L.Ed. 2d 832 (2024)). This honorable court can now independently interpret the statutes and is not bound to follow the BIA's new agency interpretation of the law regarding mandatory detention after the *Hurtado* decision. In particular, the *Loper Bright* decision explained that the agency interpretations can be used as persuasive to the courts, especially if based on specialized expertise or have been consistent over a long period. *Id.*

The BIA's *Hurtado* new interpretation is quite the opposite and tries to undo precedent interpretation and applicability of mandatory detention to any noncitizen detained in the interior of the United States, altering the "arriving alien" interpretation regardless of the time in the country or the proximity to the border. This swift change by the BIA agency interpretation stripping the Immigration Judges of the jurisdiction to set bond and allowing mandatory detention is so inconsistent with almost thirty years of BIA precedent that it should not pass muster as even persuasive authority.

77. Mr. Vazquez Jaime's circumstances qualify him under the purview of §236. He should not be considered an "arriving alien" because he was not apprehended at a port of entry or "arriving in" to the United States or "shortly after" crossing the border.

78. By contrast, Mr. Vazquez Jaime has been residing in Laredo, Texas for nearly 23 years. Because he was not an arriving alien, the government was precluded from charging him under an expedited removal process (§235(b)(1)) and charged him instead under INA §240, which supports our contention that this case is covered by §236(a).

**The Arrest should have been performed based on a Warrant; Therefore, Petitioner is subject to Discretionary Detention Under §236**

79. Petitioner was arrested inside the United States, at a checkpoint and apparently without a warrant. The only exceptions to the requirement of a warrant under INA§287(a), are when (1) the officer sees the alien entering illegally; (2) the officer has probable cause to believe the alien is unlawfully present and likely to escape before a warrant can be obtained; or (3) the officer reasonably believes the alien committed a felony.

80. The "reason to believe" has been interpreted by the BIA as probable cause where warrantless arrests would be justified if there is probable cause that an alien is unlawfully

present and is likely to escape. *Matter of Mariscal-Hernandez*, 28 I&N Dec. 666 (BIA 2022). In *Matter of Mariscal Hernandez* the BIA's analysis was that while generally a person in a vehicle may flee, the analysis must be fact-specific. In the *Mariscal Hernandez* case, the noncitizen was in a car that was stopped by law enforcement, he was cooperating; there was no reason to believe he would abscond before a warrant could be acquired, and the BIA determined that DHS should have sought a warrant.

81. In the case at bar, the re-arrest should have been executed by a warrant, Petitioner was detained at the checkpoint, surrounded by Federal Border Patrol agents and was not going to abscond when he was asserting his right to travel and work with his employment authorization, thus the detention falls under §236(a) and Petitioner should be entitled to a bond hearing.
82. In determining whether a civil detention violates a detainee's due process rights, the courts have applied a three-part test that was set forth in *Mathews v. Eldridge*, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976). Those factors are: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335, 96 S.Ct. 893. "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*, No. 25-cv-1204, 2025 WL 2430267, at \*8 (D. Or. Aug.21, 2025) (citing *Mathews*, 424 U.S. at 348, 96 S.Ct. 893.)

83. Congressional History also supports Petitioners contention that he is eligible for bond.

Analyzing the recent *Laken Riley Act of 2025, (LRA)*, Congress expected and reaffirmed by it that most non-citizens present without admission qualified for bond. *See* Pub. L. No. 119-1§2, 139 Stat. 3, 3 (2025) (adding 8 U.S.C. §1226(c)(1)(E)). In the *LRA*, Congress reserved mandatory detention to a specific set of non-citizens with serious criminal acts. The new §236(c)(1)(E) is applicable when the non-citizen is inadmissible under §212(a)(6)(A), (6)(C) or (7) and has been arrested for, charged with, convicted of, or admitted to committing burglary, theft, larceny, assault of a law-enforcement officer, shoplifting, or a crime resulting in death or serious bodily injury. The fact that Congress required both inadmissibility plus specific criminal involvement reiterates that mandatory detention is not triggered by inadmissibility alone. Thus if §235(b) arguably mandated detention of all inadmissible noncitizens, then §236(c)(1)(E) would become superfluous, which will be contrary to the anti-surplusage canon of law established by the Supreme Court. *Corley v. United States*, 556 U.S. 303 (2009).

84. Additional support for Congressional intent is the fact that mandatory detention in §235(b) is applicable “to an alien seeking admission,” which should be construed based on its ordinary everyday meaning. *Antonin Scalia & Bryan A. Garner Reading Law: The Interpretation of Legal Texts* 69 (2012). Accordingly, “Seek” is an active verb, not a type of status. Seek, Merriam-Webster, <https://www.merriam-webster.com/dictionary/seek> (defining “seek” as “to try to acquire or gain”). This is not superfluous language and must be taken into account interpreting Congress’ intent.

85. In addition, the Supreme Court established that at the time that Congress adopts a new interpretation in contradiction to a long-standing administrative practice, the courts

presume that the new provision harmonizes with well established practices. (*Monsalvo Velazquez v. Bondi*, No 23.-929, 2025 WL 1160894 (U.S. Apr. 22, 2025)). Conversely, since 1996, DHS has utilized §236(a) detaining inadmissible non-citizens and allowing bond hearings, so when Congress enacted the LRA it was under the established practices and in no way did Congress direct DHS to displace §236(a). Congress expressly did not eliminate bond eligibility by the *LRA*, as it differentiated to invoke mandatory detention only for those non-citizens with specified criminal histories.

86. Petitioner respectfully requests that this Honorable Court grant this Writ and issue an order for immediate release, as any additional days detained is a prolonged violation of due process.
87. Reportedly, some immigration judges have disregarded Writ of Habeas Orders and failed to provide a meaningful bond redetermination hearing, often leading to prolonged detention and ultimately removal on a fast-track detention docket.
88. Petitioner further suggests if other securities are needed, an order of immediate release if necessary, with an ankle monitor should satisfy Respondent's interests and stop the daily violation of Petitioner's rights.
89. If any bond is necessary, Petitioner respectfully requests and reiterates that Petitioner's circumstances have not changed since his last bond re-determination and that the government if needed should re-issue the three thousand bond previously ordered on Petitioner, which DHS still has in their bank account, as the circumstances have not changed and Petitioner is neither a danger to the community, nor a flight risk since he has a vested interest in remaining in the United States and obtaining his immigration status.

**CLAIMS FOR RELIEF**

**COUNT ONE  
VIOLATION OF FIFTH AMENDMENT RIGHT TO DUE PROCESS  
CONTINUED AND UNJUSTIFIED DETENTION**

90. The allegations in the above paragraphs are realleged and incorporated herein.
91. Mr. Vazquez Jaime's continued detention violates his right to substantive and procedural due process guaranteed by the Fifth Amendment to the U.S. Constitution.
92. The Due Process Clause of the Fifth Amendment to the U.S. Constitution provides that "[n]o person shall...be deprived of life, liberty or property without due process of law."
93. Mr. Vazquez Jaime has been in the county for approximately twenty-two years and is entitled to the Due Process Clause protections against deprivation of liberty and property. *See Zadvydas*, 533 U.S. at 693 ("[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.") Any deprivation of this fundamental liberty interest must be accompanied by adequate procedural protections, and in addition by a "sufficiently strong special justification" to outweigh the significant deprivation of liberty. *Id.* At 690.
94. Respondents have deprived and continue to deprive Mr. Vazquez Jaime of his liberty interest protected by the Fifth Amendment by detaining him since September 21, 2025.
95. Additionally, Mr. Vazquez Jaime's detention is improperly precluding him of the right to a bond hearing. Similarly to a person accused in a criminal case, a habeas corpus is proper in the case at bar. *See Moore v. Dempsey*, 261 U.S.86 (1923); *Johnson v. Zerbst*, 304 U.S. 458 (1938); *Burns v. Wilson*, 346 U.S. 137, 154 (1953).

96. Respondents' actions in detaining Mr. Vazquez Jaime and prolonging his detention without an opportunity for a bond without any legal justification violate the Fifth Amendment.

**COUNT TWO**  
**FIFTH AMENDMENT-DUE PROCESS**  
**DENIAL OF OPPORTUNITY TO CONTEST ERRONEOUS INCLUSION**  
**IN MANDATORY DETENTION CATEGORY and RE-ARREST**

97. Petitioner re-alleges and incorporates by reference paragraphs 1-96 above.

98. Mr. Vazquez Jaime has a vested interest in preventing his removal because he has been patiently waiting for the adjudication of his U visa for eight years and in addition qualifies for Cancellation of Removal relief. He is entitled to pursue these types of relief without being detained and showing he is not a danger to the community or a flight risk.

99. By statute and regulation, as interpreted by the Board of Immigration Appeals (BIA), ICE has the authority to re-arrest a noncitizen and revoke their bond, only when there has been a change in circumstances since the individual's release. 8 U.S.C. §1226(b);8 C.F.R. §236.1(c)(9) *Matter of Sugay*. 17 I&N Dec. 647640(BIA 1981). Subsequent decisions reiterate the government's further clarification in litigation, that any change in circumstances must be "material." *Saravia v. Barr*, 280 F. Supp. 3d1168, 1197 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F. 3d 1137 (9<sup>th</sup> Cir. 2018) (emphasis added). Individuals released from incarceration have a well-established liberty interest in their freedom, proscribed by the Due Process Clause.

100. In order to re-arrest Mr. Vazquez Jaime, the basic tenants of due process require at a minimum that the government establish, by clear and convincing evidence and before a neutral decision maker, that Petitioner is a danger to the community or a flight risk and

due to that re-incarceration became a necessity. The immigration court made these determinations the first time it initiated Removal proceedings and released Petitioner on September 27, 2017, setting a three-thousand-dollar bond which is still in DHS's coffers and his circumstances have not changed as he does not have any criminal record or arrest.

101. ICE's re-arrest of Petitioner on September 21, 2025, violated these regulations, laws and due process.

102. For all of the above stated reasons, Respondents' actions detaining and prolonging the detention of Petitioner without a meaningful opportunity to be heard violate his Procedural Due Process rights under the Fifth Amendment.

### **COUNT THREE ADMINISTRATIVE PROCEDURE ACT**

103. Petitioner re-alleges and incorporates by reference paragraphs 1-102 above.

104. Respondents' continued detention of petitioner and precluding him from a bond re-determination violate the INA, Administrative Procedures Act (APA), and U.S. Constitution.

105. Petitioner has been precluded of the opportunity to be free and able to assist in his defense of this civil matter by procuring the necessary evidence of hardship and good moral character to pursue a Cancellation of Removal case or his U visa case. The prolonged detention without the opportunity to return to his family and the governments' mandatory detention policy are a continuous violation to his procedural and substantive due process rights.

106. DHS and BIA's recent policy and interpretation expanding mandatory detention to those find in the interior despite not being arriving aliens will railroad Petitioner into a

fast-track removal hearing, without the opportunity to gather more evidence for his case and having to defend against this absurd interpretation while mandatorily detained.

107. Respondent's recent changes and policy guidelines of mandatory detention interpretation have improperly altered the substantive rules and process regarding mandatory custody without the required notice-and-comment period and should be in violation of the INA and its regulations, as well as a violation of the APA. Under the APA, this Court may hold unlawful and set aside an agency action that is "contrary to constitutional right, power, privilege or immunity." 5 U.S.C. §706(2)(B). The regulations at 8 C.F.R. s§1003.19(h)(1)(B) and 1003.19(h)(2)(B) precluding review of DHS custody decisions for arriving aliens in removal proceedings are in violation of substantive and procedural due process as guaranteed by the Fifth Amendment to the United States Constitution. It is also *ultra vires* as it exceeds the authority granted to ICE by Congress at 8 U.S.C. §1226(a).

#### **COUNT FOUR**

##### **SUSPENSION CLAUSE CLAIM**

108. Petitioner re-alleges and incorporates by reference paragraphs 1-107 above.
109. If 8 U.S.C. §1252 stripped the Court jurisdiction from this matter, it would be unconstitutional as applied because it would deny Mr. Vazquez Jaime an opportunity for meaningful review of the unlawfulness of his detention and removal proceedings.
110. In order to invoke the Suspension Clause, a petitioner must satisfy a three factor test: "(1) the citizenship and status of the detainee and the adequacy of the process through which that status determination was made; (2) the nature of the sites where apprehension and then detention took place; and (3) the practical obstacles inherent in

resolving the prisoner's entitlement to the writ." *Boumediene v. Bush*, 553 U.S. 723, 766 (2008). Mr. Vazquez Jaime satisfies these requirements and may invoke the Suspension Clause.

111. First, Mr. Vazquez Jaime is not a U.S. Citizen or resident, he has lived here for approximately twenty three years, and he qualifies under the INA for a U visa which is pending or in the alternative for Cancellation of Removal, he does not have any criminal record, he has lived in the United States over ten continuous yeas, he is able to provide proof of good moral character and is able to prove that his U.S. citizen wife and stepchildren will suffer exceptional and extremely unusual hardship if he were removed to Mexico.

112. The second prong is met in that Petitioner was apprehended by DHS and remains detained in the United States.

113. Petitioner contends that there are no serious, practical obstacles to resolving the present matter. This Court is able to decide whether Mr. Vazquez Jaime is entitled to the writ.

114. Given the current DHS new policy on mandatory detention and the BIA's reiteration of that recent and abrupt change in interpretation as stated above, there is no adequate alternative to a Habeas petition.

#### **COUNT FIVE**

#### **INJUNCTIVE RELIEF**

115. Petitioner re-alleges and incorporates herein by reference each and every allegation contained in paragraphs 1-114 of this Petition.

116. This Honorable Court has the discretion to enter a temporary restraining order and a preliminary injunction. *See Haitian Refugee Center v. Nelson*, 872 F. 2d 1555, 1561-1562 (11<sup>th</sup> Cir. 1989). “To be entitled to a preliminary injunction, the applicants must show (1) a substantial likelihood that they will prevail on the merits, (2) a substantial threat that they will suffer irreparable injury if the injunction is not granted, (3) their substantial injury outweighs the threatened harm to the party whom they seek to enjoin, and (4) granting the preliminary injunction will not disserve the public interest.” *Tex. Med. Providers Performing Abortion Servs. v. Lakey*, 667 F. 3d 570, 574 (5<sup>th</sup> Cir. 2012). All four elements must be demonstrated to obtain injunctive relief. *Id.*
117. Respondents’ actions have caused, and his daily detention continues to cause irreparable harm to Petitioner, which warrants immediate relief.

**PRAYER FOR RELIEF**


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

- (1) Assume jurisdiction over this matter;
- (2) Declare that ICE’s September 21, 2025, apprehension and detention of Mr. Vazquez Jaime was an unlawful exercise of authority as the ICE agent failed to present any evidence that he poses a danger to the community or a flight risk to merit a re-arrest;
- (3) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days.
- (4) Order Respondents to file with this court a complete copy of Petitioner’s A-file from the Department of Justice and the Department of Homeland Security;
- (5) Enjoin ICE from transferring Mr. Vazquez Jaime outside of the Southern District of Texas while this matter is pending;

- (6) Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment;
- (7) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately ,or in the alternative, schedule an immediate bond hearing before an immigration judge and, at such hearing take into consideration the lack of change in circumstances from his last issued bond.
- (8) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, as amended, 28 U.S.C. §2412; and on any other basis justified under law; (*See Daley v. Ceja*, No. 24-1191 (10<sup>th</sup> Circuit, 2025) and
- (9) Grant any further relief this Court deems just and proper.

Respectfully submitted,

Vielma Law Firm, P.L.L.C.  
1007 San Dario Ave  
Laredo, Texas 78040  
(956) 725-5500 Telephone  
(844) 843-5621 Telecopier  
attorney@vielmalawfirm.com

By:   
Norma Nelly Vielma, Esq.  
SBN: 24033415 (SDTX Federal ID: 34747)  
Felipe De Jesus Vielma Jr., Esq.  
SBN: 24100683

*Counsel for Petitioner*


Dated: November 17, 2025

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

I represent Petitioner, Jose Francisco Vazquez-Jaime, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 17th day of November, 2025.

Vielma Law Firm, P.L.L.C.  
1007 San Dario Ave  
Laredo, Texas 78040  
(956) 725-5500 Telephone  
(844) 843-5621 Telecopier

By:   
Norma Nelly Vielma, Esq.  
SBN: 24033415  
Felipe De Jesus Vielma Jr., Esq.  
SBN: 24100683