IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

MILHEN JANCARLOS GUZMAN GOMEZ

Petitioner,

v.

GARRETT RIPA *in his official capacity as Field Office Director of the Immigration and Customs Enforcement, Enforcement and Removal Operations Miami Field Office*; KRISTI NOEM, *in her official capacity as Secretary of the Department of Homeland Security;* and PAM BONDI, *in her official capacity as Attorney General of the United States*,

Respondents.

PETITION FOR A WRIT OF HABEAS CORPUS

Case No. 2:25-cv-01060

INTRODUCTION

1. Petitioner Milhen Jancarlos Guzman Gomez ("Milhen" or "Petitioner") entered the United States in 2021 after fleeing horrific violence and abuse in his home country of Guatemala. In 2022, the U.S. government granted his petition for Special Immigrant Juvenile Status ("SIJS"), based on findings by a state court judge that it would be in his best interest to reside with his aunt and uncle in Miami. Milhen obtained work authorization and deferred action delaying his removal, while he awaited a priority date on his SIJS visa to allow him to apply to become a Legal Permanent Resident. He began legally working and taking steps to build a productive new future in the U.S.

2. But under the new Trump administration, everything changed. One day in September 2025 while Milhen was driving from work, he was arbitrarily detained by local police

and transferred to Immigration and Customs Enforcement ("ICE") custody, despite his approved SIJS petition and deferred action status. ICE has detained Milhen ever since in appalling conditions at a series of detention facilities across South Florida—first a "hold room" in Dania Beach, then the "Alligator Alcatraz" facility in Ochopee, and now the Glades County Detention Center in Moore Haven. Since detaining Milhen, the Department of Homeland Security ("DHS") has served Milhen with a Notice to Appear ("NTA") placing him in removal proceedings, although he is actively contesting his removal in immigration court through counsel and has moved to terminate his removal proceedings based on his approved SIJS petition.

3. Milhen would seek a bond hearing in immigration court under 8 U.S.C. § 1226(a), the statutory provision that clearly covers Milhen's detention—something that Respondents even indirectly acknowledged in a Notice of Custody Determination form that DHS issued to Milhen. However, absent intervention from this Court, the Immigration Judge ("IJ") and Board of Immigration Appeals ("BIA") will inevitably conclude that they lack jurisdiction to even conduct a bond hearing for Milhen, because of DHS' July 2025 policy memo and the BIA's recent precedential decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

4. These novel interpretations have blatantly subverted the plain language and clear structure of the statutory text, as well as the legislative history, well-established Supreme Court case law, and decades of longstanding precedent and prior interpretation, by reclassifying Milhen and millions of other noncitizens who were previously eligible for bond hearings under Section 1226(a) as instead subject to mandatory detention under 8 U.S.C. § 1225(b)(2). Dozens of district courts around the nation, including this Court in multiple decisions, have already rejected this deeply flawed interpretation, reaffirmed that noncitizens in circumstances akin to Milhen's are

being detained under Section 1226(a), and accordingly ordered immediate release or bond hearings before an IJ as a remedy. This Court should reach the same result here.

5. Furthermore, the government's contention that Milhen is detained under Section 1225(b)(2) renders meaningless the statutory protections conferred to Special Immigrant Juveniles. Milhen's approved SIJ status, through which he holds an approved path is another factor that weighs strongly in favor of why he is not subject to mandatory detention under Section 1225(b)(2).

6. In addition, notwithstanding ICE's erroneous contention that Milhen is subject to mandatory detention without a bond hearing, ICE also lacks any statutory to detain Milhen to begin with, because he has been granted SIJS and cannot be removed based on the grounds alleged in ICE's NTA. *See Rodriguez v. Perry*, No. 1:24-CV-651, 2024 WL 4024047, at *4 (E.D. Va. Sept. 3, 2024) ("[A] juvenile with SIJ status . . . cannot be removed for having entered the country illegally."). As a result, this Court should grant this petition and order that ICE release Milhen immediately from detention, or order that he urgently receive a bond hearing before an IJ.

JURISDICTION & VENUE

7. This Court has subject matter jurisdiction under Art. I § 9, cl. 2 of the U.S. Constitution ("the Suspension Clause"), 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question jurisdiction); and 28 U.S.C. § 2201 (Declaratory Judgment Act).

8. Federal district courts have jurisdiction to hear habeas claims by noncitizens challenging the lawfulness of their detention. *See, e.g., Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

9. Venue is proper in this district and division pursuant to 28 U.S.C. § 2241(c)(3) and 28 U.S.C. § 1391(b)(2) and (e)(1) because Petitioner is currently detained within this district and division and events or omissions giving rise to this action occurred in this district and division.

PARTIES

10. Petitioner Milhen Jancarlos Guzman Gomez is a native and citizen of Guatemala and SIJS recipient who is currently detained at Glades County Detention Center ("Glades"), a detention facility in Moore Haven, Florida.

11. Respondent Garrett Ripa is the Field Office Director for the ICE Miami Field Office. In that capacity, he is charged with overseeing Glades, a detention center operated by the Glades County Sheriff's Office which contracts with ICE to detain noncitizens. Respondent Ripa has the authority to make custody determinations regarding individuals detained there. Therefore, Respondent Ripa is the immediate custodian of Petitioner. He is sued in his official capacity.

12. Respondent Kristi Noem is the Secretary of the U.S. DHS. She supervises ICE, an agency within DHS that is responsible for the administration and enforcement of immigration laws, and she has supervisory responsibility for and authority over the detention and removal of noncitizens throughout the United States. Secretary Noem is the ultimate legal custodian of Petitioner. Respondent Noem is sued in her official capacity.

13. Respondent Pam Bondi is the Attorney General of the United States. As the Attorney General, she oversees the Executive Office for Immigration Review ("EOIR"), including all IJs and the BIA. Respondent Bondi is sued in her official capacity.

LEGAL BACKGROUND

A. Detention During Removal Proceedings

14. Section 1229a of Title 8 of the U.S. Code (Section 240 of the INA) describes the primary process through which the government can seek to remove noncitizens from the United States. It explains that "[u]nless otherwise specified in this chapter, a proceeding under this section shall be the sole and exclusive procedure for determining whether a[] [noncitizen] may be . . . removed from the United States." 8 U.S.C. § 1229a(a)(3). To initiate removal proceedings against a noncitizen under Section 1229a, the Government must issue the noncitizen an NTA. 8 U.S.C. § 1229(a)(1). Most noncitizens go through removal proceedings from outside detention, but ICE is increasingly detaining noncitizens during their removal proceedings.

15. There are several relevant provisions for immigration detention that have existed largely the same in their current form since Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") nearly 30 years ago. Sections 1226(a) and 1225(b)(2) are particularly relevant for purposes of resolving the current petition.

16. Section 1226(a) of Title 8 of the U.S. Code (Section 236(a) of the INA) sets forth the "default rule" for "[noncitizens] already present in the United States" by "permitting—but not requiring—the Attorney General to issue warrants for their arrest and detention pending removal proceedings." *Jennings v. Rodriguez*, 583 U.S. 281, 303 (2018). It states that "on a warrant issued by the Attorney General,[1] a[] [noncitizen] may be arrested and detained pending a decision on whether the [noncitizen] is to be removed from the United States" 8 U.S.C. § 1226(a). Noncitizens

[1] In 2003, the Immigration and Naturalization Service ("INS") within the Department of Justice ("DOJ") became what is now ICE, which is housed within DHS. Therefore, some statutory references to the "Attorney General," like this one, now refer to the Secretary of DHS.

arrested upon a warrant and in ongoing removal proceedings are eligible to seek release on bond before an IJ. *Id.* at 8 U.S.C. § 1226(a)(2).

17. A separate provision, Section 1225(b) of Title 8 of the U.S. Code (Section 235(b) of the INA) governs the detention of noncitizens who seek admission to the United States at the border through two subsections, 8 U.S.C. § 1225(b)(1) and § 1225(b)(2). Section 1225(b)(1) applies to noncitizens in "expedited removal" proceedings, while § 1225(b)(2) explains that, notwithstanding several limited statutory exceptions, "in the case of a[] [noncitizen] who is an applicant for admission, if the examining immigration officer determines that a[] [noncitizen] seeking admission is not clearly and beyond a doubt entitled to be admitted, the [noncitizen] shall be detained for a [removal] proceeding under section 1229a of this title." 8 U.S.C. § 1225(b)(2). "In other words, noncitizens subject to [Section] 1225(b)(2) are not eligible for expedited removal but are subject to mandatory detention while their full removal proceedings are pending. . . . in contrast to the default detention regime under § 1226(a), which allows for discretionary release and review of detention through a bond hearing." *Salcedo Aceros v. Kaiser*, No. 25-CV-06924-EMC (EMC), 2025 WL 2637503, at *3 (N.D. Cal. Sept. 12, 2025). Consequently, IJs do not have jurisdiction to grant bond for such "applicant[s] for admission," though DHS retains the discretion to release such noncitizens on a specific type of parole "for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A).

18. Summing up the relationship between these two statutory provisions, "Section 1225 'authorizes the Government to detain certain [noncitizens] *seeking admission* into the country,' whereas [S]ection 1226 'authorizes the Government to detain certain [noncitizens] *already in the country* pending the outcome of removal proceedings.'" *J.A.C.P. v. Wofford*, No. 1:25-CV-01354-KES-SKO (HC), 2025 WL 3013328, at *5 (E.D. Cal. Oct. 27, 2025) (citing *Jennings*, 583 U.S. at

289) (emphasis in original). Reflecting that understanding, "[f]or decades, whenever [ICE] detained a noncitizen within the interior part of the United States who did not have a pending order of removal, the [DHS] detained them under [8 U.S.C. § 1226]." *Mendoza Gutierrez v. Baltasar*, No. 25-CV-2720-RMR, 2025 WL 2962908, at *1 (D. Colo. Oct. 17, 2025) (cleaned up). Consequently, "[u]ntil mid-2025, DHS applied § 1226(a) and its discretionary release and review of detention to the vast majority of noncitizens allegedly in this country without valid documentation," providing them with the opportunity to seek bond before an IJ. *Aguirre Villa, v. Normand*, No. 5:25-CV-89, 2025 WL 3095969, at *5 (S.D. Ga. Nov. 4, 2025) (internal quotation marks omitted).

19. Additionally, current binding "[f]ederal regulations provide that [noncitizens] detained under § 1226(a) receive bond hearings at the outset of detention." *Jennings*, 583 U.S. at 306 (citing 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1)). Those regulations—which the Department of Justice promulgated in 1997, and which remain in effect—explicitly state that "[noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination," and that "inadmissible [noncitizens], except for arriving [noncitizens], have available to them bond redetermination hearings before an immigration judge, while arriving noncitizens do not." *Inspection and Expedited Removal of [Noncitizens]; Detention and Removal of [Noncitizens]; Conduct of Removal Proceedings; Asylum Procedures*, 62 FR 10312, 10323 (Mar. 6, 1997).

20. On July 8, 2025, DHS radically upended this longstanding interpretation and practice when it issued a notice to all ICE employees, indicating that "DHS, in coordination with the Department of Justice (DOJ), has revisited its legal position on detention and release authorities." *See ICE Memo: Interim Guidance Regarding Detention Authority for Applications*

for Admission, AILA Doc. No. 25071607 (July 8, 2025).[2] In the memo, DHS announced that it considered "applicants for admission" to now encompass any noncitizen "present in the United States who has not been admitted or who arrives in the United States," in conjunction with its novel stance "that [Section 1225] of the Immigration and Nationality Act (INA), rather than [Section 1226], is the applicable immigration detention authority for all applicants for admission." *Id.* As a result, DHS concluded that these noncitizens "are also ineligible for a custody redetermination hearing ('bond hearing') before an immigration judge and may not be released for the duration of their removal proceedings absent a parole by DHS." *Id.*

21. On September 5, 2025, the government further doubled down on this position when the BIA issued a precedential decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). In that decision, the BIA concluded that the "plain text" of the INA mandates that noncitizens who are "present in the United States without admission are applicants for admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings." *Id.* at 220. The Board conceded that even though "section 236(c) of the INA, 8 U.S.C.A. § 1226(c), mandates detention of a subset of the category of [noncitizens] that are also subject to mandatory detention under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A)"—effectively rendering Section 1225(b)(2) superfluous and redundant under this novel interpretation—this concern is irrelevant because "redundancies are common in statutory drafting." *Id.* at 222.

22. The BIA's decision in *Yajure Hurtado*, which IJs across the nation are required to follow as binding precedent, effectively mandates that noncitizens "who surreptitiously cross into the United States remain applicants for admission until and unless they are lawfully inspected and

[2] A leaked copy of the memo is publicly available online at https://perma.cc/4Q6X-GAZC.

admitted by an immigration officer," even if they "[r]emain[] in the United States for a lengthy period of time following entry without inspection." *Id.* at 228. Consequently, IJs "have no authority to redetermine the custody conditions of a[] [noncitizen] who crossed the border unlawfully without inspection." *Id.* As a result of this change, "[t]his sweeping new policy subjects *millions* of undocumented residents to prolonged detention without the opportunity for release on bond, in contravention of decades of agency practice and robust due process protections hitherto afforded to such residents to enable them to challenge the government's basis for detaining them." *Rodriguez Cabrera, v. Mattos*, No. 2:25-CV-01551-RFB-EJY, 2025 WL 3072687, at *3 (D. Nev. Nov. 3, 2025).

23. In the months "[s]ince DHS's change in policy, courts in this District and around the country have rejected its new interpretation of the INA." *Hinojosa Garcia v. Noem*, No. 2:25-CV-00879-SPC-NPM, 2025 WL 3041895, at *5 (M.D. Fla. Oct. 31, 2025); *see also* Erazo v. Hardin, No. 2:25-CV-891-KCD-DNF, 2025 WL 3187136 (M.D. Fla. Nov. 14, 2025); *Vasquez Carcamo v. Noem*, No. 2:25-CV-00922-SPC-NPM, 2025 WL 3119263 (M.D. Fla. Nov. 7, 2025); *Hernandez Lopez v. Hardin*, No. 2:25-CV-830-KCD-NPM, 2025 WL 3022245 (M.D. Fla. Oct. 29, 2025); *Merino v. Ripa*, No. 25-23845-CIV, 2025 WL 2941609 (S.D. Fla. Oct. 15, 2025); *Puga v. Assistant Field Off. Dir., Krome N. Serv. Processing Ctr.*, No. 25-24535-CIV, 2025 WL 2938369 (S.D. Fla. Oct. 15, 2025); *Aguirre Villa v. Normand*, No. 5:25-CV-089, 2025 WL 3091833 (S.D. Ga. Nov. 5, 2025); *Menjivar Sanchez v. Wofford*, No. 1:25-CV-01187-SKO (HC), 2025 WL 3089712 (E.D. Cal. Nov. 5, 2025); *Salgado Mendoza v. Noem*, No. 1:25-CV-1252, 2025 WL 3077589 (W.D. Mich. Nov. 4, 2025); *Hernandez Alonso v. Tindall*, No. 3:25-CV-652-DJH, 2025 WL 3083920 (W.D. Ky. Nov. 4, 2025); *Rojano Gonzalez v. Sterling*, No. 1:25-CV-6080-MHC, 2025 WL 3145764 (N.D. Ga. Nov. 3, 2025); *J.A.M. v. Streeval*, No. 4:25-CV-342 (CDL),

2025 WL 3050094 (M.D. Ga. Nov. 1, 2025); *Godinez-Lopez v. Ladwig*, No. 2:25-CV-02962-SHL-ATC, 2025 WL 3047889 (W.D. Tenn. Oct. 31, 2025), *Singh v. Bondi*, No. 1:25-CV-02101-SEB-TAB, 2025 WL 3029524 (S.D. Ind. Oct. 30, 2025); *Ramirez Valverde v. Olson*, No. 25-CV-1502, 2025 WL 3022700 (E.D. Wis. Oct. 29, 2025); *Aguilar Guerra v. Joyce*, 2:25-CV-534-SDN, 2025 WL 2986316 (D. Maine Oct. 23, 2025); *Contreras Maldonado v. Cabezas*, No. 25-CV-13004, 2025 WL 2985256 (D. N.J. Oct. 23, 2025); *Caballero v. Baltazar*, No. 25-CV-03120-NYW, 2025 WL 2977650 (D. Colo. Oct. 22, 2025); *Ochoa Ochoa v. Noem*, No. 25-CV-10865, 2025 WL 2938779 (N.D. Ill. Oct. 16, 2025); *G.S. v. Bostock*, No. 2:25-CV-01255-JNW-TLF, 2025 WL 3014274 (W.D. Wash. Oct. 8, 2025), report and recommendation adopted sub nom. *G.S. v. Bostock*, No. 2:25-CV-01255-JNW-TLF, 2025 WL 3014035 (W.D. Wash. Oct. 28, 2025); *Giron Reyes v. Lyons*, No. C25-4048-LTS-MAR, 2025 WL 2712427 (N.D. Iowa Sept. 23, 2025); *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Garcia v. Noem*, No. 25-CV-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Kostak v. Trump*, No. 3:25-CV-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Leal-Hernandez v. Noem*, No. 1:25-CV-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Samb v. Joyce*, No. 25 Civ. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Maldonado v. Olson*, No. 25-CV-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Rosado v. Figueroa*, No. 25-CV-02157-PHX-DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), report and

recommendation adopted, No. 25-CV-02157- PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025).

B. Special Immigrant Juvenile Status

24. In 1990, Congress established SIJS "to protect abused, neglected or abandoned children who . . . illegally entered the United States . . ." *Osorio-Martinez v. Attorney General*, 893 F.3d 153, 163 (3d Cir. 2018) (internal quotation marks and citations omitted). In doing so, Congress exempted SIJS recipients from several grounds of removability from the United States. *See* 8 U.S.C. § 1227(c) ("Paragraphs (1)(A), (1)(B), (1)(C), (1)(D), and (3)(A) of subsection (a) . . . . shall not apply to a special immigrant described in section 1101(a)(27)(J) of this title based upon circumstances that existed before the date the [noncitizen] was provided such special immigrant status."). Thus "although a juvenile with SIJ status can be removed on certain grounds, such as having been convicted of a serious criminal offense, he cannot be removed for having entered the country illegally." *Rodriguez v. Perry*, No. 1:24-CV-651, 2024 WL 4024047, at *4 (E.D. Va. Sept. 3, 2024).

25. An SIJS recipient is eligible to adjust their status to that of a Lawful Permanent Resident (LPR), once a visa becomes available to them. 8 U.S.C. § 1255(h); *id.* § 1153(b)(4). While adjustment of status typically occurs through U.S. Citizenship and Immigration Services ("USCIS"), IJs have jurisdiction to adjust a noncitizen's status in removal proceedings. 8 C.F.R. § 1245.2(a)(1)(i).

STATEMENT OF FACTS

Milhen's Early Life and Family Circumstances

26. Milhen is a twenty year old resident of Miami who has lived in the United States for four years. He has never left the United States since he arrival as an unaccompanied minor. He is a survivor of abuse, abandonment, and neglect at the hands of his mother and father in

Guatemala. He is a law abiding, hardworking young adult who lived with his U.S. Citizen uncle, and his aunt, who he considers his second parents. Ex. 1, Sworn Affidavit of Milhen Guzman Gomez.

27. Milhen was born and raised in Guatemala, where he lived with his mother, father, and three younger siblings until 2021 and was the victim of serious parental abuse and neglect. Ex. 1, ¶¶ 1-8. In 2021, he traveled as an unaccompanied minor to the United States fleeing that abuse and seeking refuge. Ex. 2, Office of Refugee Resettlement Verification of Release. Upon arrival, Milhen was reunited with his uncle and aunt, who took him in and cared for him as their own. They provided Milhen with safety, stability, and an opportunity to focus on school that his biological parents had failed to provide. Ex. 1, ¶ 10.

[redacted] As the oldest child, Milhen was also expected to work to help the family financially. Ex. 1, ¶¶ 5-6.

[redacted]

30. Unable to continue living in fear and in a constant cycle of abuse, Milhen decided to flee his home for the United States, where he knew he could be safe from further violence. When

he left his home, Milhen was sixteen years old. [redacted] Ex. 1, ¶ 9.

31. Milhen's childhood in Guatemala was plagued by violence, neglect, and abandonment, which left him vulnerable to further harm. He believed that the U.S. offered safety and stability, however his continued unlawful detention puts those beliefs into question. Ex. 1, ¶ 25.

32. Milhen has no criminal history in the United States or in any other country, including Guatemala. Ex. 1, ¶ 24.

Milhen's Immigration History

33. Milhen entered the U.S. on or about March 5, 2021, at the age of sixteen and as an unaccompanied minor. Immigration officials apprehended him upon his entry.

34. Because Milhen was an unaccompanied minor, immigration officials transferred him to the custody of the Office of Refugee Resettlement ("ORR"). From there, he was released into the care of his aunt and uncle on or around April 12, 2021. Ex. 2.

35. In 2022, with the help of counsel, Milhen applied for Special Immigrant Juvenile Status with the USCIS based on a predicate order from a state family court finding that Milhen was abused, abandoned, and neglected by his mother and father. The state family court placed him in the custody of his aunt and uncle, and concluded it was not in Milhen's best interest to return to Guatemala or be reunified with his parents. USCIS approved his application for SIJS on November 10, 2022. Ex. 3, Special Immigrant Juvenile Status Approval Notice with Deferred Action Status.

36. Furthermore, USCIS granted Milhen deferred action status pursuant to his SIJS grant. This deferred action status, which is in effect until at least November 10, 2026, is an acknowledgment by DHS that Milhen is a "lower priority for removal from the United States."

Ex. 3. As of today, DHS has not rescinded or modified Milhen's SIJS and deferred action status. With deferred action status, Milhen applied for and received an Employment Authorization Document, which is valid until November 10, 2026. Ex. 4. Employment Authorization Document.

37. Despite entering the U.S. over four years ago, DHS had never initiated removal proceedings against Milhen until October 11, 2025.

38. Once Milhen's priority date of April 21, 2022 becomes current in approximately one or two years, he will be eligible to adjust status to that of a legal permanent resident.

39. On September 11, 2025, the Florida Highway Patrol detained Milhen under the mistaken belief that he had no valid immigration status. Milhen was driving home from work in a company vehicle when he was struck from behind by another car. Although it was a minor accident with no injuries and minor damage, police were called to the scene. Ex. 1¶ 13.

40. Upon arrival, the Florida Highway Patrol officer questioned Milhen as to his immigration status. Despite providing proof of his SIJS status, work permit, and driver's license, Milhen was detained solely for immigration purposes. Ex. 1, ¶¶ 13- 14.

41. On September 11, 2025, the Department of Homeland Security served Milhen with a Notice to Appear alleging that he is subject to removal from the United States pursuant to 8 U.S.C. § 1182(a)(6)(A)(i), being present without admission or parole. and 8 U.S.C. § 1182(a)(7)(A)(i)(I), entering the U.S. without proper entry documents. Ex. 5, Notice to Appear.

42. Milhen filed a Motion to Terminate his removal proceedings with the Miami Immigration Court on October 23, 2025 arguing that his Special Immigrant Juvenile Status waived the grounds of removability with which he had been charged. The immigration court denied the motion on October 28, 2025 and Milhen's removal proceedings remain pending.

43. Milhen has requested his immigration records through a Freedom of Information Act ("FOIA") request, and the government has denied the release of his records twice. Ex. 6, Correspondence with National Records Center.

44. Milhen has filed a Motion requesting a bond determination that remains pending, although the IJ has scheduled a bond hearing for November 21.

45. On November 11, 2025, the DHS issued an I-286, Notice of Custody Determination establishing that Milhen remains detained under section 236 of the INA. Ex. 7, Notice of Custody Determination.

Milhen's Traumatic Experiences in ICE Detention

46. Milhen was initially transported from Homestead, the site of the traffic accident, to Dania Beach, Florida. Ex. 1, ¶ 16.

47. For approximately five days, Milhen was detained in a small jail cell with ten other people. He slept on the floor and was not allowed to shower for three days. Furthermore, he was fed meager portions of food that barely satisfied his hunger. Milhen and his cellmates had no privacy to do their basic necessities and were forced to use a toilet inside their cell that was in plain view of each other. Ex. 1, ¶¶17 - 18.

48. Thereafter, Milhen was transported to Alligator Alcatraz, where he was detained for sixteen days. During his detention, Milhen was only allowed outside for recreation twice, and each time his recreation lasted only ten minutes. The rest of his time was spent inside a cell he shared with approximately thirty-two other detainees. Ex. 1, ¶ 19.

49. The food Milhen was fed lacked nutritional value. He was served the exact same breakfast and lunch every single day. Again, his breakfast was a meager meal of a fruit with juice or coffee. His lunch everyday was a ham and cheese sandwich with a bag of chips and an apple.

Milhen's prolonged detention caused him to experience a panic attack, and he witnessed others' mental health deteriorate under the conditions of detention. Ex. 1, ¶¶ 20-21.

50. Finally, after sixteen days, Milhen was transferred to Glades Detention Center. Upon his arrival, he fell ill with a fever for two days. He repeatedly requested medical care, however, to this day, has not been taken to see a doctor. Ex. 1, ¶ 23.

51. Milhen's Notice to Appear, the charging document that initiates removal proceedings was not filed until October 11, 2025, one month after his arrest by Florida Highway Patrol. Ex. 5. Therefore, Milhen endured a month of detention without the government ever having any legal basis for justifying his detention or claiming that he lacked valid immigration status.

52. Milhen's detention has caused him fear and anxiety about his future. He is concerned that the stability and status he has fought so hard to gain in the U.S. will be taken away. Ex. 1, ¶ 25.

53. If released, Milhen will live with his aunt and uncle in Miami. Despite recently moving out to his own apartment, his prolonged detention has already caused him to lose his first lease. Milhen will return to the support of his aunt and uncle. He hopes to continue working and building a productive future until he can become a legal permanent resident. Ex. 1, ¶ 26.

ARGUMENT

54. Respondents' apparent determination that Milhen is an "applicant for admission" subject to mandatory detention under 8 U.S.C. § 1225(b), rather than detained under 8 U.S.C. § 1226(a) and eligible for a bond hearing, violates the plain text and structure of the INA, renders other portions of the INA superfluous, and ignores Supreme Court case law, the legislative history of the INA, and longstanding agency practice. The government's position on this issue has already been repeatedly rejected by this Court and dozens of other district courts around the nation. *See*

Vasquez Carcamo, No. 2:25-CV-00922-SPC-NPM, 2025 WL 3119263 at *5 n.5 (collecting cases). Milhen's approved SIJ status further reinforces that, to the extent Milhen can even be detained at all, he may only be subject to discretionary detention under Section 1226(a), and not mandatory detention under Section 1225(b)(2). Finally, Respondents' own Notice of Custody Determination documentation indicates that Milhen is being detained by DHS pursuant to Section 1226(a). Consequently, "[a]s a noncitizen detained under Section 1226(a), [Milhen] has a right to a bond hearing," and this court should order that Respondents provide Milhen with a bond hearing immediately. *Id.*

A. Contrary to Respondents' contentions, Milhen is detained under Section 1226(a), rather than Section 1225(b)(2), and is therefore statutorily entitled to a bond hearing.

55. In this task of statutory interpretation, "[t]he plain language of the statutes, the overall structure, the intent of Congress, and over 30 years of agency action make clear that Section 1226(a) is the appropriate statutory framework for determining bond for noncitizens who are already in the country and facing removal," such as Milhen. *Santos Franco v. Raycraft*, No. 2:25-CV-13188, 2025 WL 2977118, at *6 (E.D. Mich. Oct. 21, 2025). As this Court and other jurisdictions across the country have held nearly universally thus far, the government cannot distort the INA in this manner to improperly deny bond hearings to detained noncitizens like Milhen who have been present in the U.S. for years, particularly when they have been granted SIJ status.

a. Respondents' recent interpretation of Sections 1226(a) and 1225(b)(2) ignore the plain language and structure of the INA.

56. Here, the question of "[w]hether [Milhen] is detained under section 1225(b)(2) or section 1226(a) is an issue of statutory interpretation that hinges on the meaning of 'seeking admission,'" an inquiry to which the "Court thus applies traditional tools of statutory construction, beginning with the plain meaning of the statutes, to decipher the meaning of that phrase." *See Puga*, No. 25-24535-CIV, 2025 WL 2938369, at *4. In order "'to determine a statute's plain

meaning,' courts 'not only look to the language itself, but also 'the specific context in which the language is used, and the broader context of the statute as a whole.'" *Pineda Velasquez v. Noem*, No. CV GLR-25-3215, 2025 WL 3003684, at *4 (D. Md. Oct. 27, 2025).

57. First, the title of Section 1225, "Inspection by immigration officers; expedited removal of inadmissible arriving [noncitizens]; referral for hearing," reflects that "[t]he use of 'arriving' indicates that the statute governs incoming noncitizens, not those present already" in the U.S. *Hernandez Lopez*, No. 2:25-CV-830-KCD-NPM, 2025 WL 3022245, at *4. The "titles, headings, and other provisions of § 1225 repeatedly refer to 'inspection,' and 'inadmissible arriving [noncitizens],' and 'examin[ations],' which typically 'occur at ports of entry, their functional equivalent, or near the border.'" *Bethancourt Soto v. Soto*, No. 25-CV-16200, 2025 WL 2976572, at *6 (D.N.J. Oct. 22, 2025). Further, "the text of Section 1225(b)(2) 'is focused on inspections for noncitizens when they arrive via 'crewman' or as 'stowaways.' . . . limited and more specific methods of entry suggest[ing] that § 1225 applies to noncitizens arriving at a border or port and [] presently 'seeking admission' into the United States.'" *Hernandez Lopez*, No. 2:25-CV-830-KCD-NPM, 2025 WL 3022245, at *4.

58. Turning to the plain text of the statute, 8 U.S.C. § 1225(b)(2)(A) requires mandatory detention of an "applicant for admission, if the examining immigration officer determines that a[] [noncitizen] seeking admission is not clearly and beyond a doubt entitled to be admitted." In effect, "the statute that mandates detention does not state that all 'applicants for admission' shall be detained," but instead "narrows this mandatory detention to [noncitizens] who are 'seeking admission.'" *J.A.M.*, No. 4:25-CV-342 (CDL), 2025 WL 3050094, at *2. Reflecting the fact that "[t]he INA defines 'admission' and 'admitted' as 'the lawful entry of the [noncitizen] into the United States after inspection and authorization by an immigration officer,'" 8 U.S.C.

§ 1101(a)(13)(A), "[b]y using the term "seeking admission,' Section 1225(b)(2) limits its application to [noncitizens] actively attempting to lawfully enter the United States." *Vasquez Carcamo*, No. 2:25-CV-00922-SPC-NPM, 2025 WL 3119263, at *3. Looking to this plain statutory language, this Court should "reject[] as implausible the government's contention that two distinct terms in the same subparagraph—'applicant for admission' and 'a[] [noncitizen] seeking admission'—somehow bear the *same* meaning even though they are (obviously) *different* terms." *Guartazaca Sumba v. Crowley*, No. 1:25-CV-13034, 2025 WL 3126512, at *4 (N.D. Ill. Nov. 9, 2025) (emphasis in original). Consequently, "based on a plain reading of the language and aided by these standard canons of statutory construction, § 1225(b)(2)(A) applies to [noncitizens] in the United States who have not been admitted ("applicants for *admission*" definition) AND who are attempting to obtain lawful admission to the United States." *J.A.M.*, No. 4:25-CV-342 (CDL), 2025 WL 3050094, at *2. Because Milhen is not currently seeking admission OR an applicant for admission, the plain language of the statute clearly reflects why he cannot be subject to mandatory detention under Section 1225(b)(2).

b. Respondents' recent interpretations of Sections 1226(a) and 1225(b)(2) violate the canon against surplusage.

59. The canon against surplusage—"construe[ing] the statute 'so that effect is given to all its provisions'"—also weighs strongly against the government's novel interpretation of 8 U.S.C. § 1225(b)(2), under which "a large part of the INA's statutory scheme would be rendered superfluous." *Aguirre Villa*, No. 5:25-CV-89, 2025 WL 3095969, at *6, 8 (citing *Corley v. United States*, 556 U.S. 303, 314 (2009)). And "the canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme." *Helbrum v. Williams Olson*, No. 4:25-CV-00349-SHL-SBJ, 2025 WL 2840273, at *6 (S.D. Iowa Sept. 30, 2025) (citing *Marx v. Gen. Rev. Corp.*, 568 U.S. 371, 386 (2013)).

60. First of all, the government's "construction of § 1225(b)(2) would make § 1226(a) essentially irrelevant, as nearly every noncitizen in the United States would be subject to mandatory detention. . . . largely nullify[ing] § 1226(a) because 'it is not clear under what circumstances § 1226(a)'s authorization of detention on a discretionary basis would ever apply." *Aguirre Villa*, No. 5:25-CV-89, 2025 WL 3095969, at *8. The fact that in 1996 as part of IIRIRA, Congress also adopted an "'express exception' to Section 1226(a)'s discretionary framework" through the mandatory detention provisions of Section 1226(c) 'implies that there are no *other* circumstances under which' detention is mandated for noncitizens, like [Milhen] who are subject to Section 1226(a)." *Contreras-Cervantes v. Raycraft*, No. 2:25-CV-13073, 2025 WL 2952796, at *8 (E.D. Mich. Oct. 17, 2025)) (citing *Jennings*, 583 U.S. at 300).

61. Relatedly, the government's interpretation would "nullif[y] Congress's recent amendment of the INA through the Laken Riley Act, codified at 8 U.S.C. § 1226(c)(1)(E)." *Hinojosa Garcia*, No. 2:25-CV-00879-SPC-NPM, 2025 WL 3041895, at *4. Under the government's proposed interpretation of Section 1225(b)(2), "Section 1226(c)(1)(E)'s mandated detention for inadmissible noncitizens who are implicated in an enumerated crime, including those 'present in the United States without being admitted or paroled,' would be meaningless since 'all noncitizens who have not been admitted' would already be governed by 1225's mandatory detention authority." *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1258 (W.D. Wash. 2025) (internal citation omitted). The government's interpretation would lead to an absurd result because, "[i]f mere inadmissibility already made detention of a resident noncitizen mandatory under Section 1225, the Laken Riley Act would have no effect," despite Congress having just passed the Laken Riley Act earlier in 2025. *Vasquez Carcamo*, No. 2:25-CV-00922-SPC-NPM, 2025 WL 3119263 at *4. To that end, "the respondents' interpretation would not only 'render superfluous another part

of the same statutory scheme,' it would render superfluous an act amending that statutory scheme. . . . implicitly suggest[ing] that Congress passed Laken Riley for no good reason at all." *Alvarez Ortiz v. Freden*, No. 25-CV-960-LJV, 2025 WL 3085032, at *9 (W.D.N.Y. Nov. 4, 2025).

62. Consequently, this Court should "not find that Congress passed the Laken Riley Act to 'perform the same work' that was already covered by § 1225(b)(2)." *Maldonado*, No. 25-CV-3142 (SRN/SGE), 2025 WL 2374411, at *12. In order to avoid violating the canon against surplusage in relation to these other provisions of Section 1226, this Court should reject the government's baseless interpretation of Section 1225(b)(2) as not applying to noncitizens such as Milhen, who are actually detained under Section 1226(a) and therefore eligible for bond.

c. The Supreme Court's well-established case law, the legislative history of the INA, and longstanding agency practice also weigh against the Government's erroneous interpretation of Sections 1225(b)(2) and 1226(a).

63. On this issue, "the legislative history and case law" also support Milhen's position as being detained under Section 1226(a) and eligible for bond, because "DHS's new interpretation flies in the face of the . . . historical understanding of the INA." *Vasquez Carcamo*, No. 2:25-CV-00922-SPC-NPM, 2025 WL 3119263 at *3, 4. By blatantly departing from the Supreme Court's longstanding precedent, the INA's legislative history, and the agency's long-established practice up to July 2025, the government's interpretation of Sections 1225(b)(2) and 1226(a) are erroneous and cannot be applied in this manner to justify Milhen's mandatory detention without bond.

64. For decades, the Supreme Court has observed that "'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. In the latter instance the Court has recognized additional rights and privileges not extended to those in the former category who are merely 'on the threshold of initial entry.'" *Hinojosa Garcia*, No. 2:25-CV-00879-SPC-NPM, 2025 WL 3041895, at *4 (quoting *Leng May Ma v. Barber*, 357 U.S.

185, 187 (1958)). Along those same lines, noncitizens physically present within the U.S. are entitled to a greater level of due process protections because "once a[] [noncitizen] enters the country, the legal circumstance changes, for the Due Process Clause applies to all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Id.* (citing *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001)).

65. Applying these more general principles to Sections 1225 and 1226, the Supreme Court has explicitly "framed § 1225 as part of a process that 'generally begins at the Nation's borders and ports of entry, where the Government must determine whether a [noncitizen] seeking to enter the country is admissible," and, in contrast, "describe[d] § 1226 as governing 'the process of arresting and detaining' noncitizens who are living 'inside the United States' but 'may still be removed,' including noncitizens 'who were inadmissible at the time of entry.'" *Rosado*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099, at *8 (citing *Jennings*, 583 U.S. at 287). The *Jennings* Court also "explained that Section 1225 'authorizes the Government to detain certain [noncitizens] seeking admission into the country[,]' while Section 1226 'authorizes the Government to detain certain [noncitizens] already in the country pending the outcome of removal proceedings[.]'" *Vasquez Carcamo*, No. 2:25-CV-00922-SPC-NPM, 2025 WL 3119263 at *4. While the Supreme Court did not explicitly rule on the exact legal question at issue in this petition, these decisions nevertheless reflect why Section 1226(a) is the applicable detention statute for noncitizens like Milhen who had previously entered the U.S. without inspection and then been physically present in the U.S. for years.

66. Second, the legislative history of the INA—including Sections 1225(b)(2) and 1226(a)—similarly weighs against the government's new interpretations of those provisions. Prior to the passage of IIRIRA in 1996, the provision that preceded Section 1226(a), 8 U.S.C. § 1252(a),

included a provision for "discretionary release on bond" for "noncitizens residing in the United States, who had previously entered without inspection." *Maldonado*, No. 25-CV-3142 (SRN/SGE), 2025 WL 2374411, at *11 (citing 8 U.S.C. § 1252(a) (1994)).When Congress amended the INA through the IIRIRA in 1996, the resulting Conference Report explained twice that Section 1225 would apply to '[noncitizens] *arriving in* the United States,'" while also noting that "section 236(a) [8 U.S.C. § 1226(a)] restates the current provisions in [the former] section 242(a)(1) [8 U.S.C. § 1252(a)(1)] 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. Conf. Rep. No. 104-828 at 208, 209, 210 (1996) 210 (emphasis added). Additionally, the government's proposed interpretation of Sections 1225(b)(2) and 1226(a) would effectively "nullif[y] Congress's recent amendment of the INA through the Laken Riley Act," which had amended Section 1226(c) by "mandat[ing] detention of noncitizens who meet certain criminal and inadmissibility criteria." *Vasquez Carcamo*, No. 2:25-CV-00922-SPC-NPM, 2025 WL 3119263, at *4 (M.D. Fla. Nov. 7, 2025). These data points from the INA's legislative history all indicate why Congress never intended for the absurd result that would flow from the Government's present interpretation of Sections 1225(b)(2) and 1226(a).

67. Finally, the government's novel interpretation of Sections 1225(b)(2) and 1226(a) are utterly inconsistent with "the application of a statute, adoption of regulations, and a long-standing practice that remained uniform for approximately 29 years after the IIRIRA was enacted in 1996." *Guaita Quinapanta v. Bondi*, No. 25-CV-795-WMC, 2025 WL 3157867, at *5 (W.D. Wis. Nov. 12, 2025). This Court should not accept "DHS's new reading of the INA which upends decades of consistent agency practice, and subjects millions of individuals to mandatory detention." *Berto Mendez v. Noem*, No. 2:25-CV-02062-RFB-MDC, 2025 WL 3124285, at *7 (D.

Nev. Nov. 7, 2025). Instead, longstanding practices weigh heavily in favor of interpreting Sections 1225(b) and 1226 to find that Milhen, and other similarly situated noncitizens, are detained under Section 1226(a) and therefore eligible for a bond hearing before an IJ.

d. Milhen's Special Immigrant Juvenile Status further demonstrates why he is being detained under Section 1226(a), not Section 1225(b)(2).

68. Milhen's Special Immigrant Juvenile Status is yet another factor that weighs in favor of why he must be considered detained under Section 1226(a) and eligible for a bond hearing. SIJ Status is a protective classification that entitles an individual to an array of statutory and regulatory protections, including specifically, a bond hearing to satisfy minimum due process rights. *Lopez Sarmiento v. Perry*, No. 1:25-CV-01644-AJT-WBP, 2025 WL 3091140, at *3 (E.D. Va. Nov. 5, 2025).

69. Special Immigrant Juveniles are a hair's breadth away from adjusting status to that of a legal permanent resident, and therefore, they are entitled to enjoy at least minimum due process rights. *Id.* To further protect SIJ designees, Congress enacted legislation to remove barriers to adjustment of status, like waiving certain grounds of inadmissibility and conferring parole under 8 U.S.C § 1255(h). Specifically, SIJs are exempt from inadmissibility for being present without admission or parole and having entered without the appropriate entry documents. *Id.*

70. Moreover, many SIJ designees are eligible for social benefits such as educational assistance or healthcare, intended to help them build a secure life in the United States. 8 U.S.C. § 1232(d)(4)(A). The legislation highlights congressional intent that SIJ recipients be allowed strengthen their ties to the U.S. while awaiting adjudication of their residency. *Rodriguez v. Perry*, 747 F. Supp. 3d 911 (E.D. Va. 2024).

71. Congress enacted these robust procedural protections to ensure that Special Immigrant Juveniles, like Milhen, do not have their status revoked without good cause. *Lopez Sarmiento v. Perry*, 2025 WL 3091140 (2025).

72. In light of the special protections and benefits Congress grants SIJ designees, the fact that Respondents are subjecting Milhen to mandatory detention under 8 U.S.C § 1225(b) simply does not make sense. Detention imposes a significant hurdle to adjustment of status that defeats the purpose of Congress having explicitly amended the INA to parole SIJS recipients, waive many common grounds of inadmissibility, and provide access to social benefits. Finally, detention would violate Milhen's procedural and substantive due process rights.

73. Additionally, Milhen's SIJ status "'bespeak[s] a substantial legal relationship between [him] and the United States—a relationship far more significant than' the relationship possessed between an initial entrant into this country." Del Cid v. Bondi, No. 3:25-CV-00304, 2025 WL 2985150, at *16 (W.D. Pa. Oct. 23, 2025). Milhen "was here for over four years when Respondents detained him in" September 2025 and does not have a criminal record, reflecting that he has "not violated either the public confidence placed in [him] or the benefit conferred upon [him] via [his] SIJ Status," but rather "ha[s] begun making meaningful and substantial connections to this country." *Id.* All of these factors heavily weigh in favor of holding that "so long as [Milhen] is re-detained while he possesses SIJ Status and no criminal record, he may only be detained pursuant to § 1226(a), not § 1225." *Id.*

74. Milhen's SIJ status supports that he is being detained under Section 1226(a), not Section 1225(b)(2), and reinforces why this Court should urgently order that he receive an immediate bond hearing.

e. Respondents' own documentation reflects that Milhen is detained under Section 1226(a).

75. Furthermore, the documentation that Respondents themselves provided to Milhen through the Form I-286, Notice of Custody Determination issued on November 11, 2025—nearly two months after Milhen was first detained—further reflects that Milhen is subject to discretionary detention under Section 1226(a), not mandatory detention under Section 1225(b)(2). The Notice of Custody Determination explicitly states that DHS is detaining Milhen "[p]ursuant to the authority contained in section 236 of the Immigration and Nationality Act and part 236 of title 8, Code of Federal Regulations," and also provides the option to check a box "request[ing] an immigration judge review of this custody determination." *See* Ex. 7.

76. Although "Respondents' own initial classification of [Milhen]'s detention is not dispositive," it "certainly is relevant to the Court's assessment of the credibility and good faith of Respondents' new position as to the basis for [his] detention." *Hyppolite v. Noem*, No. 25-CV-4304 (NRM), 2025 WL 2829511, at *8 (E.D.N.Y. Oct. 6, 2025) (internal quotation marks omitted). Consequently, regardless of whatever "new position as to the basis for [Milhen]'s detention" Respondents may "adopt[] post hoc and raise[] for the first time in this litigation," here "Respondents' own exhibits unequivocally establish that [Milhen] was detained pursuant to Respondents' discretionary authority under § 1226(a)," and not pursuant to Section 1225(b)(2). *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588, at *4, 5 (S.D.N.Y. Aug. 13, 2025). This documentation in the Notice of Custody Determination is yet one more factor indicating why Respondents cannot subject Milhen to mandatory detention under Section 1225(b)(2).

f. This Court should excuse exhaustion of administrative remedies because doing so would be futile.

77. "Plaintiffs need not exhaust administrative remedies if 'the administrative body is shown to be biased or has otherwise predetermined the issue before it.' *Vasquez Carcamo*, No. 2:25-CV-00922-SPC-NPM, 2025 WL 3119263, at *3 (citing *McCarthy v. Madigan*, 503 U.S. 140, 148 (1992)). Here, although Milhen has a bond hearing scheduled for November 21 before the agency, even "[r]equiring [him] to make an administrative request for a bond hearing would be futile because the result is predetermined by *Yajure Hurtado*." *Hinojosa Garcia*, No. 2:25-CV-00879-SPC-NPM, 2025 WL 3041895, at *3. Under these circumstances, where it is already clear that Respondents will erroneously contend that Milhen is mandatorily detained under Section 1225(b)(2) and therefore categorically ineligible for bond under *Yajure Hurtado*, this Court should "find[] good cause to excuse exhaustion" before an IJ or the BIA. *Vasquez Carcamo*, No. 2:25-CV-00922-SPC-NPM, 2025 WL 3119263, at *3.

B. Alternately, Respondents lack legal authority to detain Milhen as a SIJS recipient.

78. When Congress established Special Immigrant Juvenile Status, it exempted SIJS recipients from several grounds of removability from the United States. *See* 8 U.S.C. § 1227(c) ("Paragraphs (1)(A), (1)(B), (1)(C), (1)(D), and (3)(A) of subsection (a) . . . . shall not apply to a special immigrant described in section 1101(a)(27)(J) of this title based upon circumstances that existed before the date the [non-citizen] was provided such special immigrant status.").

79. The removability grounds with which Milhen is charged in his most recent NTA, are 8 U.S.C. § 1182(a)(6)(A)(i), which renders noncitizens who are present in the United States "without being admitted or paroled" inadmissible, and 8 U.S.C. § 1182(a)(7)(A)(i)(I), which renders noncitizens who are not in possession of a valid immigrant visa or other entry document inadmissible. *See* Ex. 5. But federal law explicitly states that these grounds "*shall not apply* to a

special immigrant." *See* 8 U.S.C. § 1227(c) (including "Paragraph [1227(a)](1)(A)" (describing noncitizens who were inadmissible at the time of entry or adjustment of status) among removability grounds that "shall not apply" to Special Immigrant Juveniles).

80. Accordingly, "although a juvenile with SIJ status can be removed on certain grounds, such as having been convicted of a serious criminal offense, he cannot be removed for having entered the country illegally." *Rodriguez*, 2024 WL 4024047, at *4. The fact that Milhen has been granted deferred action on account of his SIJS, *see* Ex. 3, further illustrates the impropriety of his current removal proceedings.

81. To the extent that ICE lacks legal authority to continue pursuing removal proceedings against Milhen as a SIJS recipient, it also necessarily lacks the authority to detain him "pending a decision" in those invalid removal proceedings. 8 U.S.C. § 1226(a). Without a legal basis for Respondents to detain Milhen, this Court should order his immediate release from Respondents' custody.

CLAIMS FOR RELIEF

COUNT I

VIOLATION OF THE INA AND APA

82. The proceeding paragraphs are incorporated by reference.

83. Since Milhen is not an applicant for admission "seeking admission" or "an arriving alien" under Section 1225(b)(2) and has no disqualifying criminal arrests or convictions under Section 1226(c), he is entitled to a bond hearing by an immigration judge pursuant to Section 1226(a). The application of Section 1225(b)(2) to Milhen unlawfully mandates his continued detention and violates the INA by depriving him of the rights he should be afforded under Section 1226(a). To the extent that DHS asserts that *Yajure Hurtado* nevertheless requires his mandatory

detention under Section 1225(b)(2), the BIA's interpretation in that case is ultra vires and in conflict with the careful balance of factors clearly established in the INA in regard to bond eligibility, and not subject to deference. *See Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024). Such an agency action also violates the Administrative Procedure Act, as it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; contrary to constitutional right, power, privilege, or immunity; and in excess of statutory jurisdiction, authority, or limitations, or short of statutory right. 5 U.S.C. § 706(2)(A)-(C).

COUNT II

VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT

84. The proceeding paragraphs are incorporated by reference.

85. The Due Process Clause's guarantee to substantive due process prohibits the government from infringing upon certain "fundamental" liberty interests, "unless the infringement is narrowly tailored to support a compelling government interest." *Reno v. Flores*, 507 U.S. 292, 302 (1993). It applies to "all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693.

86. 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*, 533 U.S. at 690.

87. Under the framework of *Mathews v. Eldridge*, 424 U.S. 319 (1976), categorically denying Milhen bond based on *Matter of Yajure Hurtado* violates procedural due process for several reason, including but not limited to:

a. The burden on the Government is low, as until DHS's very abrupt re-interpretation of the INA in *Yajure Hurtado*, IJs regularly conducted bond

hearings for noncitizens like Milhen, and the IJs weighed individualized risks appropriately as required by the INA. The Government's burden to do what it had done for decades prior to its abrupt change in police does not justify any additional weight given to this factor.

b. The risk of erroneous deprivation of liberty is extremely high, as the very purpose of the new interpretation is to categorically deprive people such as Milhen from the opportunity to prove, as required by the INA, that release from detention on bond is appropriate.

88. Milhen has a fundamental interest in liberty and being free from arbitrary official restraint. The government's detention of Milhen without a bond hearing to determine whether he is a flight risk or danger to others violates his right to due process, and this Court should remedy that violation by promptly ordering that he receive a bond hearing before an IJ.

COUNT III

ACCESS TO RECORDS

89. The preceding paragraphs are incorporated by reference.

90. Milhen also requests that the Court order Respondents to produce all records relating to decisions on his arrest and detention held by Respondents, including but not limited to all records bearing upon the "true cause of the [Petitioner's] detention," 28 U.S.C. § 2243, in support of their return. See 28 U.S.C. § 2247 ("On application for a writ of habeas corpus documentary evidence, transcripts of proceedings upon arraignment . . . shall be admissible in evidence."); *Harris v. Nelson*, 394 U.S. 286, 292 (1969) ("[T]he power of inquiry on federal habeas is plenary.") (punctuation and citation omitted).

91. Review of these records would be directly relevant and probative to the Court's inquiry into Milhen's statutory and constitutional claims, and production of these records would

be a minimal burden on Respondents. At a minimum, Respondents are far better positioned to provide this evidence. *See Harris*, 394 U.S. at 291 ("[T]his Court has emphasized, taking into account the office of the writ and the fact that the petitioner, being in custody, is usually handicapped in developing the evidence needed to support in necessary detail the facts alleged in his petition . . .").

92. The existence (or nonexistence) of records regarding Respondents' custody determination, legal justifications, and factual basis for Milhen's arrest and detention are all directly relevant to his claims in his petition for habeas corpus. *See Harris*, 394 U.S. at 300 ("[W]here specific allegations before the court show reason to believe that the petitioner may, if the facts are fully developed, be able to demonstrate that he is confined illegally and is therefore entitled to relief, it is the duty of the court to provide the necessary facilities and procedures for an adequate inquiry.").

COUNT IV

VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT, 8 U.S.C. § 1226(A)—No Authority to Detain

93. 8 U.S.C. § 1226(a) authorizes immigration detention only during pending removal proceedings.

94. There are no valid removal proceedings currently pending against Milhen because he cannot be removed on the grounds with which he is currently charged. Therefore, Respondents have no legal authority to detain him. *See* 8 U.S.C. § 1227(c).

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

a. Assume jurisdiction over this matter;

b. Order, under the All Writs Act, 28 U.S.C. § 1651, that Respondents not transfer Petitioner outside of the jurisdiction of the U.S. District Court for the Middle District of Florida during the pendency of this petition;

c. Declare that Petitioner's detention is unlawful, and he is not an applicant for admission or "seeking admission" under 8 U.S.C. § 1225(b)(2) subject to mandatory detention, and that Respondents may properly detain Petitioner, if at all, only pursuant to 8 U.S.C. § 1226(a);

d. Declare that Respondents' actions, as set forth herein, violate Petitioner's due process rights;

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

f. Order Respondents to produce all records relating to decisions on his arrest and detention held by Respondents, including all records bearing upon the "true cause of [Milhen's] detention";

g. Award Petitioner reasonable fees under the Equal Access to Justice Act, 5 U.S.C. § 504;

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

Respectfully submitted,

Dated: November 19, 2025

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Pending Pro Hac Vice Admission

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

I am submitting this verification on behalf of the Petitioner because I am Petitioner's attorney. I have discussed with the Petitioner the events described in this Petition. Based on those discussions, I hereby verify that the statements made in this Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: November 19, 2025

Respectfully submitted,

/s/ Tensie Suengas
Counsel for Petitioner

CERTIFICATE OF SERVICE

I, undersigned counsel, hereby certify that on this date, I filed this Petition for Writ of Habeas Corpus and all attachments using the CM/ECF system, which will send a notice of electronic filing (NEM) to all counsel of record. My co-counsel will furthermore serve a copy of the petition and exhibits on each Respondent by certified mail.

Dated: November 19, 2025

Respectfully submitted,

/s/ Tensie Suengas
Counsel for Petitioner