

INTRODUCTION

1. Petitioner Rolando Rafael Inclan Lopez is in the physical custody of Respondents at the South Texas ICE Processing Center in Pearsall, Texas. **Exh. A, Form I-830E Department of Homeland Security U.S. Immigration and Customs Enforcement Notice to EOIR: Alien Address, dated September 24, 2025.**
2. He now faces unlawful detention because the Department of Homeland Security (DHS) and the Executive Office for Immigration Review (EOIR) have concluded Petitioner is subject to mandatory detention.
3. Petitioner is charged in immigration proceedings with being present in the United States without having been inspected or admitted. 8 U.S.C. § 1182(a)(6)(A)(i). **Exh. B, Superseding Notice to Appear, dated July 8, 2022.**
4. Petitioner entered the United States without inspection near San Luis, Arizona, on or about April 11, 2022. *Id.* This was his first and only entry into the United States. He was subsequently detained shortly after his entry and then released on or about April 15, 2022, on his own recognizance pursuant to DHS's detention authority found at 8 U.S.C. 1226. **Exh. C, Form I-220A U.S. Department of Homeland Security Order of Release on Recognizance, dated April 15, 2022.**
5. More than three years later, on September 17, 2025, while the Petitioner appeared for a routine scheduled check-in appointment at the Immigration and Customs Enforcement (ICE) facility at 3523 Crosspoint Drive in San Antonio, Texas, DHS re-detained Petitioner. **Exh. A, Form I-830E Department of Homeland Security U.S.**

Immigration and Customs Enforcement Notice to EOIR: Alien Address dated September 24, 2025.

6. The Petitioner has been detained by DHS at the South Texas ICE Processing Center since his subsequent re-detention and his release from detention is not foreseeable at this time. Petitioner contends that his detention is unlawful because he has been denied the opportunity to request release on bond, despite his statutory and constitutional right to do so, discussed *infra*.
7. The present petition filed on behalf of the Petitioner is one of a number of recent lawsuits with virtually indistinguishable facts challenging the federal government's authority to detain noncitizens during the pendency of removal proceedings under 8 U.S.C. § 1225(b). Overwhelmingly, federal district courts have ruled in favor of Petitioners. *See e.g. Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *PUERTO-HERNANDEZ, Petitioner, v. LYNCH et al.*, No. 1:25-CV-1097, 2025 WL 3012033 (W.D. Mich. Oct. 28, 2025); *Castellanos v. Kaiser*, No. 25-CV-07962, 2025 WL 2689853, at *3 (N.D. Cal. Sept. 18, 2025); *Cardin Alvarez v. Rivas*, No. CV 25-02943 PHX GMS (CDB), 2025 WL 2898389, at *21 (D. Ariz. Oct. 7, 2025); *J.U. v. Maldonado*, No. 25-CV-04836 (OEM), 2025 WL 2772765 (E.D.N.Y. Sept. 29, 2025); *PÉREZ PINA, v. STAMPER*, No. 2:25-CV-00509-SDN, 2025 WL 2939298 (D. Me. Oct. 16, 2025); *Ochoa Ochoa v. Noem*, No. 25 CV 10865, 2025 WL 2938779, at *5 (N.D. Ill. Oct. 16, 2025); *Bermeo Sicha v. Bernal*, No. 1:25-CV-00418-SDN, 2025 WL 2494530 (D. Me. Aug. 29, 2025).

8. Accordingly, to preserve Petitioner's statutory and constitutional rights, this Court should grant the instant petition for a Writ of Habeas Corpus for the reasons stated *infra*. Absent an order from this Court, Petitioner will continue to suffer an unconstitutional deprivation of his right to liberty, as well as extreme irreparable harm given the personal facts of his situation. Petitioner asks this Court to find that his detention is unconstitutional and order immediate release from detention.

JURISDICTION

9. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*
10. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).
11. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

VENUE

12. Venue is proper with this Court because Petitioner is detained at South Texas ICE Processing Center in Pearsall, Texas, which is within the jurisdiction of this District.

REQUIREMENTS OF 28 U.S.C. § 2243

13. 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).

14. 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

15. Petitioner, Rolando Rafael Inclan Lopez, is a citizen of Cuba. He is currently detained at South Texas ICE Processing Center in Pearsall, Texas. He is in the custody, and under the direct control, of Respondents and their agents.
16. Respondent Bobby Thompson is the Warden of the South Texas ICE Processing 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.
17. Respondent Miguel Vergara is sued in his official capacity as the Acting Field Office Director of the San Antonio Field Office of U.S. Immigration and Customs Enforcement. Respondent Vergara is a legal custodian of Petitioner and has authority to release him.
18. Respondent Kristi 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 / custody. Respondent Noem is a legal custodian of Petitioner.

19. Respondent Pamela 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

20. Petitioner is a 25-year-old native and citizen of Cuba. He entered the United States without inspection near San Luis, Arizona, on or about April 11, 2022 and was taken into custody after turning himself in to immigration authorities. This was his first and only entry into the United States. Petitioner has resided continuously in the United States since that time.

21. Three days after his entry and initial detention, he was issued a Notice to Appear, along with a Notice of Custody Determination determining that he would be released on his own recognizance pursuant to 8 USC 1226(a). **Exh. C, Form I-220A U.S. Department of Homeland Security Order of Release on Recognizance, dated April 15, 2022.** The following day he was released from custody. He proceeded to check-in with DHS repeatedly without incident.

22. On July 15, 2022, Petitioner filed an I-589 application for asylum with EOIR San Antonio Immigration Court, well before his one year filing deadline. Prior to his subsequent detention, Petitioner was set for a final Individual Hearing on the merits of his asylum application on November 5, 2026 on the non-detained docket at the San Antonio Immigration Court.

23. On the basis of his pending asylum application Petitioner obtained an employment authorization document and driver's license. With that Petitioner began working in construction to support himself and his family.
24. In October of 2023, Petitioner and his partner welcomed a son, R.A.I.Q, born in Austin, Texas.
25. The day of his last scheduled report date with ICE on September 17, 2025, Petitioner traveled in person to the San Antonio ICE Field Office. Rather than proceed as they had before, DHS took him into custody without explanation or cause.
26. Petitioner has been detained by ICE for two months, having missed his son's second birthday, and will not be released by DHS due to the assertion that the EOIR has no jurisdiction to release him, pursuant to the decision from the Board of Immigration Appeals issued on September 5, 2025, which ruled that all persons who entered without inspection are deemed applicants for admission to the United States and are ineligible for bond redetermination hearings based on the immigration statute. **Exh. D, Matter of Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025)**
27. Petitioner remains detained by ICE. Petitioner and his family have been suffering irreparable harm from his continued detention. Aside from the mere fact that he has been detained unlawfully since September 17, 2025, his detention is also causing severe harm to his family members, as he is the primary breadwinner for his one year old child and his partner.
28. Furthermore, Petitioner's father, R. I. G., a U.S. Lawful Permanent Resident, was the victim of a brutal physical aggravated assault on August 12, 2025. While operating a water truck at work, Petitioner's father was 


 Petitioner's inability to be with his father at this time is generating further irreparable harm for Petitioner's family.

LEGAL FRAMEWORK

29. The Immigration and Nationality Act (INA) lays out three basic forms of detention for noncitizens in removal proceedings. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard non-expedited removal proceedings before an immigration judge (IJ). *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c). Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under § 1225(b)(2). Last, the Act also provides for detention of noncitizens who have been previously ordered removed, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)–(b).
30. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2). The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104–208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section 1226(a) was amended earlier this year by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025), which added section 1226(c)(1)(E) to the prior statutory framework.

31. Following the enactment of IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). Thus, in the decades that followed, most people who entered the U.S. without inspection—unless they were subject to some other detention authority—received bond hearings. That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed to be “arriving” were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply “restates” the detention authority previously found at § 1252(a)).

32. Respondents’ new policy of summarily detaining all noncitizens who entered the U.S. at any time without being admitted or paroled turns this well-established legal understanding and procedure on its heads and violates the statutory scheme of the Immigration and Nationality Act. Indeed, this legal theory that noncitizens who entered the United States without admission or parole are ineligible for bond hearings has already been rejected by multiple federal District Courts, who have consistently found that such individuals are entitled to bond redetermination hearings before immigration judges, and who have rejected the application of § 1225(b)(2) to such cases. Nevertheless, in July of 2025, ICE released a memorandum instructing its attorneys to coordinate with the Department of Justice, the agency housing EOIR, to reject bond redetermination hearings for applicants who entered the United States without inspection or admission.

Subsequently, on September 5, 2025 the Board of Immigration Appeals issued its precedent decision in Matter of Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025), in which the Board held that all non-citizens who have not been inspected and admitted are “applicant(s) for admission” and are thus subject to the mandatory detention provision found in 8 U.S.C. § 1225(b)(2). In the decision, the Board applies highly questionable legal analysis and reasoning to arrive at its holding. This interpretation defies the INA and Petitioner’s right to Due Process pursuant to the Fifth Amendment of the U.S. Constitution.

33. First, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner. Indeed, the evidence in this case shows that DHS also agrees that Petitioner’s case is governed by § 1226 because he was specifically released from custody pursuant to that provision. **Exh. C, Form I-220A U.S. Department of Homeland Security Order of Release on Recognizance, dated April 15, 2022.**

34. Section 1226(a) applies by default to all persons “pending a decision on whether the [noncitizen] is to be removed from the United States.” These removal hearings are held under § 1229a, which “decid[e] the inadmissibility or deportability of a[] [noncitizen].”

35. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)’s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a). Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole.

36. By contrast, § 1225(b) provides that “in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title.” 8 U.S.C. § 1225(b)(2)(A). “Thus, for § 1225(b)(2)(A) to apply, several conditions must be met—in particular, an “examining immigration officer” must determine that the individual is: (1) an “applicant for admission”; (2) “seeking admission”; and (3) “not clearly and beyond a doubt entitled to be admitted.” See Martinez v. Hyde, 2025 WL 2084238, at *6 (D. Mass. July 24, 2025). In other words, this requires (a) having a particular status, namely that of being an “applicant for admission”; (b) an affirmative, present tense act, namely that of “seeking admission”; and (c) a contemporaneous determination in response to said act by an examining immigration official, namely a determination that one is not “entitled to be admitted.”

37. The provision’s entire framework is premised on inspections at the border of people who are “seeking admission” to the United States. 8 U.S.C. § 1225(b)(2)(A). Indeed, the implementing regulations at 8 C.F.R. § 1.2 addresses noncitizens who are presently “coming or attempting to come into the United States.” The statutory and regulatory text’s use of the present and present progressive tenses excludes noncitizens apprehended in the interior, because they are no longer in the process of arriving in or seeking admission to the United States. See, e.g., *Martinez*, 2025 WL 2084238 at *6 (*citing the use of present and present progressive tense to support the conclusion that § 1225(b)(2) does not apply to individuals apprehended in the interior*). Although the BIA’s reasoning in *Yajure-Hurtado* draws from the Supreme Court’s decision in *Jennings v. Rodriguez*,

583 U.S. 281 (2018) the Supreme Court in *Jennings* recognized the above distinction, stating that § 1225 “applies primarily to aliens seeking entry into the United States.” *Jennings*, at 297. The Supreme Court then notes that § 1226 “applies to aliens already present in the United States.” *Id* at 303.

38. Second, traditional canons of statutory construction defy Respondents’ position. Under “one of the most *basic* interpretive canons ... [a] statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant[.]” Corley v. United States, 556 U.S. 303, 314 (2009) (emphasis added). “This principle ... applies to interpreting any two provisions in the U.S. Code, even when Congress enacted the provisions at different times.” Bilski v. Kappos, 561 U.S. 593, 607–08 (2010). Here, if the Respondents’ position were correct, and § 1225’s mandatory detention provisions apply to *all* inadmissible non-citizens then it would render superfluous provisions of § 1226 that apply to certain categories of inadmissible noncitizens. See § 1226(c)(1)(A), (D), (E). See Rodriguez v. Bostock, No. 3:25-CV-05240-TMC, 2025 WL 2782499, at *18 (W.D. Wash. Sept. 30, 2025) (“Put another way, 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.”) (emphasis added). See also Corley v. United States, 556 U.S. 303, 314, n.5 (explaining that seemingly conflicting statutes read in isolation can be reconciled if read in their broader context, which includes observing the anti-superfluosity canon).

39. Third, the recent Laken Riley Act amendments lend further support for this unassailable reading of § 1226. “When Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect.” Stone v. I.N.S., 514 U.S. 386, 397 (1995). In January 2025, Congress passed the Laken Riley Act, Pub. L. 119-1, 139 Stat. 3 (2025), which carved out an *additional* category of noncitizens from 1226(a)’s discretionary detention scheme. This category includes those noncitizens who are deemed inadmissible, including for being “present in the United States without being admitted or paroled,” and who have been arrested, charged with, or convicted of certain crimes. See U.S.C. 1226(c)(1)(E). If § 1226(a) did not apply to noncitizens who are inadmissible for entering without having been admitted, then the added language applying § 1226(c)(1)(E) to those particular inadmissible noncitizens would render Congress’ most recent amendments to the INA as surplusage. “These ‘specific exceptions’ for inadmissible noncitizens who are arrested, charged with, or convicted of the enumerated crimes logically leaves those inadmissible noncitizens not criminally implicated under Section 1226(a)’s default rule for discretionary detention.” Rodriguez v. Bostock, No. 3:25-CV-05240-TMC, 2025 WL 2782499, at *19 (W.D. Wash. Sept. 30, 2025). Reading § 1225(b) to cover everyone present without admission would nullify the newly added § 1226(c)(1)(E) and the long-standing authority of § 1226(a). Congress’s decision to target only certain inadmissible non-citizens with specific criminal conduct for mandatory detention under § 1226(c)(1)(E) proves that the general rule under § 1226(a) applies to other inadmissible non-citizens. In sum, the statute can only be interpreted one way: 1225(b)(2)(A) applies to apprehensions at the border, while 1226(a) applies to apprehensions in the interior.

40. Fourth, Respondents' position is also in conflict with the legislative history of Section 1226(a). Upon passing IIRIRA, Congress declared that the new § 1226(a) "restates the current provisions in [the predecessor statute] regarding the authority of the Attorney General to arrest, detain, and release on bond a[] [noncitizen] who is not lawfully in the United States." *See* H.R. Rep. No. 104-469, pt. 1, at 229; *see also* H.R. Rep. No. 104-828, at 210 (same). Similarly, in a 1997 interim rule issued "to implement the provisions of [IIRIRA]," the underlying EOIR federal register notice explains that "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled...will be eligible for bond and bond redetermination." 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). "Because noncitizens arrested while unlawfully residing in the United States were entitled to discretionary detention under section 1226(a)'s predecessor statute, and Congress declared its scope unchanged by IIRIRA, this background supports the position" that Petitioner "is subject to discretionary detention." Rodriguez v. Bostock, No. 3:25-CV-05240-TMC, 2025 WL 2782499, at *23 (W.D. Wash. Sept. 30, 2025)
41. Overwhelmingly, "almost every district court to consider this issue has concluded, 'the statutory text, the statute's history, Congressional intent, and § 1226(a)'s application for the past three decades" support finding that § 1226 applies to these circumstances." Buenrostro-Mendez v. Bondi, No. CV H-25-3726, 2025 WL 2886346, at *3 (S.D. Tex. Oct. 7, 2025) (citing Pizarro Reyes, 2025 WL 2609425, at *4). *See also* Lopez-Arevelo, 2025 WL 2691828, at *7 ("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."); Rodriguez v. Bostock, No. 3:25-cv-5240, 2025 WL 2782499, at *1 &

n.3 (W.D. Wash. Sep. 30, 2025) (collecting cases and noting that “[e]very district court to address” the statutory question “has concluded that the government’s position belies the statutory text of the INA, canons of statutory interpretation, legislative history, and longstanding agency practice”); Belsai D.S. v. Bondi, No. 25-cv-3682, 2025 WL 2802947, at *6 (D. Minn. Oct. 1, 2025) (joining the “chorus” of courts concluding that § 1226 applies); Padron Covarrubias v. Vergara, No. 5:25-CV-112, 2025 WL 2950097 (S.D. Tex. Oct. 8, 2025).

42. Furthermore, the position of Respondents is that the Petitioner is subject to mandatory detention without a bond hearing under the plain language of 8 U.S.C. § 1225(b), despite being previously released on his own recognizance pursuant to §1226 and living in the U.S. for over three years. This position has been resoundingly and repeatedly rejected by federal district courts across the country, including courts in the Fifth Circuit and the Western District of Texas. *See Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, 2025 WL 2496379, at *8 n.5 (E.D. Mich. Aug. 29, 2025) (collecting twelve related decisions); *see, e.g., Jimenez v. FCI Berlin, Warden*, No. 25-CV-326-LM-AJ, 2025 WL 2639390, at *10 n.9 (D.N.H. Sept. 8, 2025); *Lopez Santos v. Noem*, No. 3:25-CV-01193, 2025 WL 2642278, at *5 (W.D. La. Sept. 11, 2025); *Kostak v. Trump*, No. 25-CV-01093, 2025 WL 2472136, at *3 (W.D. La. Aug. 27, 2025); *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, (W.D. Tex. Sept. 22, 2025).

43. Respondents’ own documents and actions, the plain text of the statute, traditional canons of statutory construction, and DHS’ longstanding practices all establish that 1226(a) governs Petitioner’s detention. The Order of Release on Recognizance issued the following day provided that he was released “[i]n accordance with section 236 of the

[INA] and the applicable provisions of Title 8 of the Code of Federal Regulations.” **Exh. C, Form I-220A U.S. Department of Homeland Security Order of Release on Recognizance.** In all, “the government's treatment of Petitioner since his arrival in the United States in [December 2021], establishes that Petitioner was detained pursuant to the government's discretionary authority under § 1226(a).” *See J.U. v. Maldonado*, No. 25-CV-04836 (OEM), 2025 WL 2772765, at *5 (E.D.N.Y. Sept. 29, 2025).

44. In addition, “CBP's decision to conditionally parole [Petitioner] under Section 1226(a) is consistent with its longstanding practice of conditionally paroling noncitizens arrested near the border. *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *3, f.7 (D. Mass. July 7, 2025) (citing Transcript of Oral Argument, at 44:24-45:2, *Biden v. Texas*, 597 U.S. 785 (2022) (No. 21-954) (Solicitor General representing that “DHS's long-standing interpretation has been that 1226(a) applies to those who have crossed the border between ports of entry and are shortly thereafter apprehended.”).

45. Respondents' actions implicate constitutional Due Process. Noncitizens are entitled to Due Process of the law under the Fifth Amendment. *Demore v. Kim*, 538 U.S. 510, 523 (2003). “To determine whether a civil detention violates a detainee's due process rights, courts apply the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976).” *Martinez v. Noem*, No. 5:25-cv-1007-JKP, 2025 WL 2598379, at *2 (W.D. Tex. Sept. 8, 2025). 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.

46. As to the first element, “[t]he interest in being free from physical detention’ is ‘the most elemental of liberty interests.’ ” *Martinez v. Noem*, 2025 WL 2598379, at *2 (quoting *Hamdi v. Rumsfeld*, 542 U.S. 507, 529, 124 S.Ct. 2633, 159 L.Ed.2d 578 (2004)). Petitioner possesses a cognizable interest in his freedom from detention because he spent over three years at liberty in the United States. See *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *11 (W.D. Tex. Sept. 22, 2025) (“Because he spent nearly three years at liberty in the United States, Lopez-Arevelo possesses a cognizable interest in his freedom from detention.”)

47. Under the second *Mathews* factor, the Court considers “whether the challenged procedure creates a risk of erroneous deprivation of individuals’ private rights and the degree to which alternative procedures could ameliorate these risks.” *Martinez v. Noem*, 2025 WL 2598379, at *3 (quoting *Gunaydin v. Trump*, 784 F.Supp.3d 1175, 1187 (D. Minn. 2025)). As the Petitioner is putatively ineligible for a bond hearing after being arbitrarily re-detained based on the DHS policy, the Respondents “did not in fact provide ... an opportunity to contest the existence, nature, or significance of [any] supervision violations’ or otherwise make an individualized assessment of the need to re-detain him.” *Lopez-Arevelo*, 2025 WL 2691828, at *11 (citing *Espinoza v. Kaiser*, No. 1:25-CV-01101 JLT SKO, 2025 WL 2581185, at *11 (E.D. Cal. Sept. 5, 2025)). Further, given “the BIA’s interpretation of mandatory detention in *Yajure Hurtado* [and *Q. Li*], that appeal is almost certainly a futile exercise. “ *Id.* “Thus, there is a high risk that [Petitioner] has been and will continue to be erroneously deprived of his liberty.” *Id.*

48. On the final factor, Respondents cannot identify any meaningful countervailing interest, other than perhaps their generalized interest in enforcing the INA as they interpret it. “But the decision to release [Petitioner] on his own recognizance [nearly four] years ago, in and of itself, ‘reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk.’” *Lopez-Arevelo*, 2025 WL 2691828, at *11 (citing *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), aff’d 905 F.3d 1137 (9th Cir. 2018)). The Petitioner has diligently pursued relief and complied with all conditions of release. Nor has he committed any crimes or endangered anyone during his three years at liberty in the United States.
49. Overwhelmingly, federal courts have sided with immigrant detainees challenging their detention on virtually indistinguishable grounds, on statutory and constitutional grounds, including courts in this district. *See e.g. Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *PUERTO-HERNANDEZ, Petitioner, v. LYNCH et al.*, No. 1:25-CV-1097, 2025 WL 3012033 (W.D. Mich. Oct. 28, 2025); *Castellanos v. Kaiser*, No. 25-CV-07962, 2025 WL 2689853, at *3 (N.D. Cal. Sept. 18, 2025); *Cardin Alvarez v. Rivas*, No. CV 25-02943 PHX GMS (CDB), 2025 WL 2898389, at *21 (D. Ariz. Oct. 7, 2025); *J.U. v. Maldonado*, No. 25-CV-04836 (OEM), 2025 WL 2772765 (E.D.N.Y. Sept. 29, 2025); *PÉREZ PINA, v. STAMPER*, No. 2:25-CV-00509-SDN, 2025 WL 2939298 (D. Me. Oct. 16, 2025); *Ochoa Ochoa v. Noem*, No. 25 CV 10865, 2025 WL 2938779, at *5 (N.D. Ill. Oct. 16, 2025); *Bermeo Sicha v. Bernal*, No. 1:25-CV-00418-SDN, 2025 WL 2494530 (D. Me. Aug. 29, 2025).

50. “The appropriate relief for an immigration detainee held in violation of their right to due process is their immediate release from custody, and to be provided with relief returning them to *status quo ante*, i.e., the last uncontested status which preceded the pending controversy.” *Cardin Alvarez v. Rivas*, No. CV 25-02943 PHX GMS (CDB), 2025 WL 2898389, at *21 (D. Ariz. Oct. 7, 2025). “With regard to the specifics of the relief that might be ordered, in recent weeks many federal district courts” –including the Western District of Texas– “have ordered the immediate release of immigration habeas petitioners held in custody in violation of their due process rights.” *Id*; *See Santiago v. Noem*, No. 25-cv-361, 2025 WL 2792588, at *13 (W.D. Tex. Oct. 1, 2025); *See also J.U. v. Maldonado*, No. 25-cv-4836, 2025 WL 2772765, at *10 (E.D.N.Y. Sept. 29, 2025); *Zumba v. Bondi*, No. 25-cv-14626, 2025 WL 2753496, at *11 (D.N.J. Sept. 26, 2025); *Sampiao v. Hyde*, No. 25-cv-11981, 2025 WL 2607924, at *12 (D. Mass. Sept. 9, 2025); *Rosado v. Figueroa*, 2025 WL 2337099, at *19 (D. Ariz. Aug. 11, 2025); *M.S.L. v. Bostock*, 2025 WL 2430267, at *1 (D. Or. Aug. 21, 2025); *Bermeo Sicha v. Bernal*, No. 1:25-CV-00418-SDN, 2025 WL 2494530, at *7 (D. Me. Aug. 29, 2025). Immediate release in this case is appropriate, given that the Respondents will not prevail in showing that it was necessary to re-detain Petitioner because he somehow became a flight risk or danger to the community subsequent to the government’s previous decision to release him pursuant to § 1226.
51. Alternatively, the court should order a bond hearing as a habeas remedy where the burden is on the government. Indeed “as of 2020, the ‘vast majority’—an ‘overwhelming consensus’—of courts granting immigration detainees’ habeas petitions have placed the burden on the Government to prove by clear and convincing evidence that the detainee

poses a danger or flight risk.” *Lopez-Arevelo*, 2025 WL 2691828, at *12 (citing *Velasco Lopez*, 978 F.3d at 855 n.14 (citations omitted). “Allocating the burden in this manner reflects the concern that ‘[b]ecause the alien’s potential loss of liberty is so severe ... he should not have to share the risk of error equally.’” (citing *German Santos*, 965 F.3d at 214). “And the consensus appears to be holding, with many courts in recent days ordering a bond hearing, at which the Government bears the burden of justifying the immigration habeas petitioner’s continued detention by clear and convincing evidence.” *Id.*; *Velasquez Salazar v. Dedos*, No. 25-cv-835, 2025 WL 2676729, at *9 (D.N.M. Sept. 17, 2025); *Morgan v. Oddo*, No. 24-cv-221, 2025 WL 2653707, at *1 (W.D. Pa. Sept. 16, 2025); *J.M.P. v. Arteta*, No. 25-cv-4987, 2025 WL 2614688, at *1 (S.D.N.Y. Sept. 10, 2025); *Espinoza*, 2025 WL 2581185, at *14; *Arostegui-Maldonado v. Baltazar*, 2025 WL 2280357, at *12 (D. Colo. Aug. 8, 2025).

CAUSES OF ACTION

COUNT ONE

Violation of 8 U.S.C. § 1226(a)

Unlawful Re-detention after being released under 8 U.S.C. 1226(a)

52. Petitioners repeat, re-allege, and incorporate by reference each and every allegation in the preceding paragraphs as if fully set forth herein.
53. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to noncitizens residing in the United States who have already been determined by DHS to be subject to discretionary detention under 8 U.S.C. 1226(a). The application of § 1225(b)(2) to bar

Petitioners from receiving a bond redetermination hearing before an immigration judge violates the Immigration and Nationality Act.

COUNT TWO
Violation of the Administrative Procedure Act
Unlawful Denial of Bond

54. Petitioners repeat, re-allege, and incorporate by reference each and every allegation in the preceding paragraphs as if fully set forth herein.
55. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to noncitizens who are arrested while residing in the United States. Such noncitizens are presumptively detained under § 1226(a), unless they are specifically subject to another detention provision, such as § 1225, § 1226(c) or § 1231. In Petitioner’s situation, a presumption of detention under 1226(a) is not necessary because Respondents have indicated that Petitioner is subject to detention pursuant to § 1226(a) and released him on his own recognizance after determining that he was not a flight risk or danger to the community.
56. The application of § 1225(b)(2) to re-detain the Petitioner and bar him from receiving a bond redetermination hearing before an immigration judge is arbitrary, capricious, and not in accordance with law, and as such, it violates the APA. See 5 U.S.C. § 706(2).

COUNT THREE
Violation of Fifth Amendment Right to Due Process

57. Petitioners repeat, re-allege, and incorporate by reference each and every allegation in the preceding paragraphs as if fully set forth herein.
58. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. “Freedom from imprisonment— from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S.Ct. 2491, 150 L.Ed.2d 653

(2001).

59. Petitioner has a fundamental interest in liberty and being free from official restraint.
60. The government's arbitrary subjection of Petitioner to mandatory detention pursuant to 8 U.S.C. 1225, after affording him about three years of release on his own recognizance under § 1226 without affording him any opportunity to contest his detention within the agency violates his right to Due Process pursuant to the Fifth Amendment.

PRAYER FOR RELIEF

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

- (1) Assume jurisdiction over this matter and maintain jurisdiction to the extent necessary to ensure Respondents' compliance with any order this Court may issue;
- (2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days.
- (3) Declare that the arbitrary re-detention of Petitioner and refusal to allow him a bond redetermination hearing before an immigration judge violates the Due Process clause of the Fifth Amendment;
- (4) Issue a Writ of Habeas Corpus requiring that Respondents immediately release the Petitioner, or, in the alternative, provide a custody redetermination hearing before an impartial Immigration Judge within seven days where the Government bears the burden to prove by clear and convincing evidence that the detainee poses a danger or flight risk;
- (5) Set aside Respondents' unlawful detention policy under the APA, 5 U.S.C. § 706(2);
- (6) Order further relief as this Court deems just and appropriate.

Respectfully submitted,

/s/ Mark Kinzler

Mark Kinzler, Esq.

Oregon State Bar No. 05298-8

The Law Office of Mark Kinzler, P.C.

PO Box 684309

Austin, TX 78768

(512) 402-7999

mark@kinzlerimmigration.com

Attorney for Petitioner

Dated: November 19, 2025

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

I represent Petitioner, Rolando Rafael Inclan Lopez, 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 19th day of November, 2025.

/s/ Mark Kinzler
Mark Kinzler, Esq.
Oregon State Bar No. 05298-8
Attorney for Petitioner

CERTIFICATE OF SERVICE

5:25-cv-01533

I hereby certify that on November 20, 2025, I mailed by United States Postal Service the Petition for Writ of Habeas Corpus by certified mail to the following:

Stephanie Rico
Civil Process Clerk Office of the United States Attorney for the Western District
of Texas
601 N.W. Loop 410, Suite 600
San Antonio, Texas 78216-5597

Bobby Thompson Warden at South Texas ICE Processing Center
566 Veterans Drive
Pearsall, TX 78061

San Antonio Field Office Director of Enforcement and Removal Operations
Miguel Vergara
1777 NE Loop 410
Floor 15
San Antonio, TX 78217

Secretary of Homeland Security Kristi Noem
2707 Martin Luther King Jr., Ave., SE
Washington, DC 20528-0485

U.S. Attorney General Pamela Bondi
950 Pennsylvania Ave NW
Washington, DC 20530

The above respondents were also named in the CM/ECF habeas corpus filing with the District Court for the Western District of Texas

/s/ Mark Kinzler