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8 **UNITED STATES DISTRICT COURT**  
9 **FOR THE SOUTHERN DISTRICT OF TEXAS**

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

10 **JOSE ORLANDO GIRON**

11 Plaintiff,



12 vs.

**PETITION FOR WRIT OF  
HABEAS CORPUS**

13  
14 **BRET BRADFORD**, Houston Field Office  
15 Director, Immigration and Customs  
16 Enforcement and Removal Operations  
17 (“ICE/ERO”);  
18 **TODD LYONS**, Acting Director of Immigration  
19 Customs Enforcement (“ICE”);  
20 **U.S. IMMIGRATION AND CUSTOMS**  
21 **ENFORCEMENT;**  
22 **KRISTI NOEM**, Secretary of the Department of  
23 Homeland Security (“DHS”);  
24 **U.S. DEPARTMENT OF HOMELAND**  
25 **SECURITY (“DHS”);**  
26 **PAMELA BONDI**, ATTORNEY GENERAL OF  
27 THE UNITED STATES; AND  
28 **EXECUTIVE OFFICE FOR IMMIGRATION**  
**REVIEW**

Defendants

**INTRODUCTION**

1  
2  
3 1. Petitioner is a native and citizen of El Salvador, who Respondents have  
4 detained at the IAH Secure Adult Detention Facility, 3400 FM 250 South,  
5 Livingston, Texas 77351. He is charged in a Notice to Appear dated October 27,  
6 2025 with inadmissibility under 8 U.S.C. § 1182(a)(6)(A)(i) [and 8 U.S.C. §  
7 1182(a)(7)(i)(I)] and, on available information, he has been continuously physically  
8 present in the United States for nearly three decades immediately preceding his  
9 present detention. On available information, he has no criminal record.  
10  
11

12 2. Petitioner is being unlawfully detained because the Department of  
13 Homeland Security (DHS) and the Executive Office for Immigration Review  
14 (EOIR) of the Department of Justice (DOJ) have erroneously concluded he is subject  
15 to mandatory detention, and not eligible for bond.  
16  
17

18 3. On July 8, 2025, DHS issued a directive instructing all Immigration and  
19 Customs Enforcement (ICE) employees to consider anyone inadmissible under 8  
20 U.S.C. §1182(a)(6)(A)(i)—i.e., those, like Petitioner, who entered the United States  
21 without inspection— to be an “applicant for admission” under 8 U.S.C. §  
22 1225(b)(2)(A) and therefore subject to mandatory detention. Consistent with this  
23 policy, DHS and EOIR have denied Petitioner release from immigration custody.  
24  
25

26 4. The Executive Office for Immigration Review (EOIR) of the Department  
27 of Justice (DOJ) has recently affirmed that view. In a published decision, dated  
28

1 September 5, 2025, the Board of Immigration Appeals held that “Immigration  
2 Judges lack authority to hear bond requests or to grant bond to [noncitizens] who are  
3 present in the United States without admission.” *Matter of Yajure Hurtado*, 29 I&N  
4 Dec. 216, 229 (BIA 2025).  
5

### 6 JURISDICTION AND VENUE

7  
8 5. At the time this Petition is filed, and through the present day, Petitioner has  
9 been detained at the IAH Secure Adult Detention Facility, 3400 FM 250 South,  
10 Livingston, Texas 77351. He is in the physical custody of Bret Bradford, Field  
11 Office Director of Enforcement and Removal Operations Houston Field Office.  
12

13  
14 6. This court may grant relief under the habeas corpus statutes, 28 U.S.C. §  
15 2241 *et. seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et. seq.*, the All Writs  
16 Act, 28 U.S.C. § 1651, and the Immigration and Nationality Act, 8 U.S.C. §  
17 1252(e)(2).  
18

19 7. Under 28 U.S.C. § 2241 and § 1391(b), (e), venue is proper in this district  
20 because, when this case was initiated and through the present day, Petitioner has  
21 been in Respondents’ custody at IAH Secure Adult Detention Facility, 3400 FM 250  
22 South, Livingston, Texas 77351, within the Southern District of Texas. *See, e.g.*,  
23 *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973).  
24  
25 Venue is further proper because a substantial part of the events or omissions giving  
26 rise to Petitioner’s claims occurred in this district.  
27  
28

**REQUIREMENTS OF 28 U.S.C. § 2243**

1  
2 8. The court must grant the petition for writ of habeas corpus or order  
3 Respondents to show cause “forthwith,” unless Petitioner is not entitled to relief. 28  
4 U.S.C. § 2243. If an order to show cause is issued, the Respondents must file a return  
5 “within three days unless for good cause additional time, not exceeding twenty days,  
6 is allowed.” *Id.*  
7

8  
9 9. Habeas corpus is “perhaps the most important writ known to the  
10 constitutional law . . . affording as it does a swift and imperative remedy in all cases  
11 of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963). “The  
12 application for the writ usurps the attention and displaces the calendar of the judge  
13 or justice who entertains it and receives prompt action from Petitioner within the  
14 four corners of the application.” *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000)  
15 (citation omitted).  
16  
17  
18

19 **PARTIES**

20  
21 10. Petitioner Jose Orlando Giron [REDACTED] [DOB [REDACTED]] a 67  
22 year-old native and citizen of El Salvador who last arrived in the United States in or  
23 about 1995. He was served a Notice to Appear [NTA] dated October 27, 2025,  
24 charging him under 8 U.S.C. § 1182(a)(6)(A)(i)(present without admission or  
25 parole) and 8 U.S.C. § 1182(a)(7)(A)(i)(I)(not in possession of valid entry  
26 documents). He has an upcoming master calendar hearing before the Conroe  
27  
28

1 Immigration Court on December 9, 2025 at 1 p.m. He has been in custody of the  
2 Department of Homeland Security (DHS), at the IAH Secure Adult Detention  
3 Facility, Livingston, Texas 77351, since October 27, 2025 -- over two years [actually  
4 nearly thirty years], after his entry in 1995. He has not been afforded bond  
5 consideration, or a bond hearing.  
6  
7

8 11. Respondent Bret Bradford is the Acting Director of the Houston District  
9 Office of Enforcement and Removal Operations, U.S. Immigration and Customs  
10 Enforcement, Department of Homeland Security. As such, Mr. Bradford is  
11 Petitioner's immediate custodian. He is named in his official capacity.  
12

13 12. Respondent Todd Lyons is the acting director of U.S. Immigration and  
14 Customs Enforcement, and he has authority over the actions of respondent David A.  
15 Marin and ICE in general. Respondent Lyons is a legal custodian of Petitioner.  
16  
17

18 13. Respondent Kristi Noem is the Secretary of the Department of Homeland  
19 Security (DHS) and has authority over the actions of all other DHS Respondents in  
20 this case, as well as all operations of DHS. Respondent Noem is a legal custodian of  
21 Petitioner and is charged with faithfully administering the immigration laws of the  
22 United States.  
23  
24

25 14. Respondent Pamela Bondi is the Attorney General of the United States,  
26 and as such has authority over the Department of Justice and is charged with  
27 faithfully administering the immigration laws of the United States.  
28

1 15. Respondent Department of Homeland Security (DHS) is the federal  
2 agency responsible for implementing and enforcing the INA, including the detention  
3 of noncitizens.  
4

5 16. Respondent U.S. Immigration Customs Enforcement is the federal  
6 agency responsible for custody decisions relating to non-citizens charged with being  
7 removable from the United States, including the arrest, detention, and custody status  
8 of non-citizens.  
9  
10

11 17. Respondent Executive Office for Immigration Review (EOIR) is the  
12 federal agency responsible for implementing and enforcing the INA in removal  
13 proceedings, including for custody redeterminations in bond hearings.  
14

15 **FACTUAL BACKGROUND**

16 18. Petitioner Jose Orlando Giron [REDACTED] [DOB [REDACTED]] a 67 year-  
17 old native and citizen of El Salvador who last arrived in the United States in or about  
18 1995. He was apprehended by ICE on October 26, 2025 while walking down the  
19 street, was detained, and served a Notice to Appear [NTA] dated October 27, 2025,  
20 charging him under 8 U.S.C. § 1182(a)(6)(A)(i)(present without admission or  
21 parole) and 8 U.S.C. § 1182(a)(7)(A)(i)(I)(not in possession of valid entry  
22 documents). He has an upcoming master calendar hearing before the Conroe  
23 Immigration Court on December 9, 2025 at 1 p.m. Notably, he previously held  
24 Temporary Protected Status, which lapsed for failure to renew when he was  
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1 recovering from a work injury. He held a work permit in the past, and intends to  
2 seek renewal of TPS status. He will file an I-589 application for asylum before the  
3 Immigration Judge. He has been in custody of the Department of Homeland Security  
4 (DHS), at the IAH Secure Adult Detention Facility, 3400 FM 250 South, Livingston,  
5 Texas 77351, since October 27, 2025 -- over two years [actually over 30 years], after  
6 his entry in 1995. He has not been afforded bond consideration, or a bond hearing.  
7 Mr. Giron is suffering from a prior-existing injury and injuries aggravated or  
8 conditioned by his apprehension, and detention.  
9

10  
11  
12 Any request for bond redetermination before EOIR is futile as the BIA  
13 recently held in a published decision that persons, like Petitioner, who are charged  
14 under 8 U.S.C. § 1182(a)(6)(A)(i) are subject to mandatory detention as applicants  
15 for admission under 8 U.S.C. § 1225(b)(2)(A). *See Mosqueda v. Noem*, 2025 WL  
16 2591530, at \*7 (C.D. Cal. Sept. 8, 2025) (noting that BIA's decision in *Yajure*  
17 *Hurtado* renders prudential exhaustion futile). Pursuant to Respondents' new policy,  
18 Petitioner remains in mandatory detention. Absent relief from this court, Petitioner  
19 faces the prospect of months, or even years, in immigration custody without ever  
20 receiving an individualized hearing justifying Petitioner's detention in violation of  
21 the Immigration and Nationality Act, and Due Process.  
22  
23  
24  
25

### 26 EXHAUSTION

27  
28 19. No statutory requirement of administrative exhaustion applies to  
PETITION FOR WRIT OF HABEAS CORPUS - 7

1 Petitioner's case. Moreover, the judicially created "general rule that parties exhaust  
2 prescribed administrative remedies before seeking relief from the federal courts"  
3 does not apply to Petitioner's' present challenge, as there are no prescribed  
4 administrative remedies to which Petitioner could resort. *McCarthy v. Madigan*, 503  
5 U.S. 140, 144–45 (1992), superseded by statute on other grounds as recognized in  
6 *Woodford v. Ngo*, 548 U.S. 81 (2006).  
7

8  
9  
10 20. In particular, DHS has taken the position that noncitizens like Petitioner  
11 who entered without inspection are subject to mandatory detention under 8 U.S.C. §  
12 1225, and the Executive Office for Immigration Review has affirmed that view. In  
13 a published decision, the Board of Immigration Appeals recently held that  
14 "Immigration Judges lack authority to hear bond requests or to grant bond to  
15 [noncitizens] who are present in the United States without admission." *Matter of*  
16 *Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Under the BIA's interpretation,  
17 Petitioner is ineligible for bond as a noncitizen who entered the United States  
18 without inspection. Accordingly, there are no administrative remedies that Petitioner  
19 could exhaust before seeking habeas relief. *See Singh v. Lewis*, No. 4:25-CV-96-  
20 RGJ, 2025 WL 2699219, at \*3 (W.D. Ky. Sept. 22, 2025) ("[t]he United States has  
21 made clear their position on Section 1225, and it is being applied at all levels within  
22 the DHS. Therefore, it is unlikely that any administrative review would lead to the  
23 United States changing its position and precluding judicial review"); *Lopez-Campos*

1 v. *Raycraft*, No. 2:25-CV-12486, 2025 WL 2496379, at \*4 (E.D. Mich. Aug. 29,  
2 2025) (“Because exhaustion would be futile and unable to provide [petitioner] with  
3 the relief he requests in a timely manner, the court waives administrative exhaustion  
4 and will address the merits of the habeas petition.”).

5  
6 21. Further, neither an immigration judge nor the Board of Immigration  
7 Appeals can rule on a petitioner’s constitutional claims. *See Matter of R-A-V-P-*, 27  
8 I. & N. Dec. 803, 804 n.2 (B.I.A. 2020) (holding that IJs and the BIA lack any  
9 authority to consider the constitutionality of the statutes or regulations governing  
10 immigration detention that they administer and are bound to follow); *Matter of C--*,  
11 20 I. & N. Dec. 529, 532 (B.I.A. 1992) (“[I]t is settled that the immigration judge  
12 and this Board lack jurisdiction to rule upon the constitutionality of the Act and the  
13 regulations.”); *see also Gonzalez v. O’Connell*, 355 F.3d 1010, 1017 (7th Cir. 2004)  
14 (noting that “the BIA has no jurisdiction to adjudicate constitutional issues”).

15  
16 22. The Court should find administrative exhaustion would be futile. *See*  
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28  
*Vasquez- Rodriguez v. Garland*, 7 F.4th 888, 896 (9th Cir. 2021) (“where the  
agency's position appears already set and recourse to administrative remedies is very  
likely futile, exhaustion is not required.”). BIA decisions are binding on immigration  
judges, and *Yajure Hurtado* thus precludes an IJ from finding jurisdiction over  
noncitizens like Petitioner to hold a custody redetermination hearing. Therefore,  
judicial intervention enjoining Respondents from preventing Petitioner from having

1 a bond hearing pursuant to the holding in *Yajure Hurtado* is necessary to enable  
2 Petitioner to avail himself of his administrative remedies.

3  
4 23. Therefore, the court should consider the merits of this Petition.

### 5 **LEGAL FRAMEWORK**

#### 6 ***I. Detention Authority and Respondent's Efforts to Expand Mandatory***

##### 7 ***Detention***

8  
9 24. The Immigration and Nationality Act [INA] prescribes three basic forms  
10 of detention for the vast majority of noncitizens in removal proceedings.

11  
12 25. First, 8 U.S.C. § 1226 authorizes the permissive detention of noncitizens  
13 “already in the country.” *See Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018). 8  
14 U.S.C. § 1226(a) “sets out the default rule: The Attorney General may issue a  
15 warrant for the arrest and detention of a[] [noncitizen] ‘pending a decision on  
16 whether the [noncitizen] is to be removed from the United States.’” *Id.* at 288  
17 (quoting § 1226(a) (emphasis added)).

18  
19  
20  
21 26. Individuals in Section 1226(a) detention are generally entitled to a bond  
22 hearing at the outset of their detention. *See* § 1226(a)(2); 8 C.F.R. §§ 1003.19(a),  
23 1236.1(c)(8), (d)(1); *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239, 1247  
24 (W.D. Wash. 2025) (“those detained under Section 1226(a) are entitled to a bond  
25 hearing before an [immigration judge] at any time before entry of a final removal  
26 order.”).

1           27. Section 1226(c) “carves out a statutory category” of noncitizens from  
2 Section 1226(a) for whom detention is mandatory, comprised of individuals who  
3 have committed certain “enumerated ... criminal offenses [or] terrorist activities.”  
4 *Jennings*, 583 U.S. at 289 (citing § 1226(c)(1)). Among the individuals carved out  
5 and subject to mandatory detention are certain categories of “inadmissible”  
6 noncitizens. § 1226(c)(1)(A), (D), (E). Reference to such inadmissible noncitizens  
7 makes clear that, by default, people who are applicants for admission but  
8 encountered in the interior are afforded a bond hearing under subsection 1226(a).  
9 Courts have recently confirmed this understanding of Section 1226. *See Rodriguez*  
10 *Vazquez*, 779 F. Supp. 3d at 1257 (citing *Shady Grove Orthopedic Assocs., P.A. v.*  
11 *Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)) (“When Congress creates ‘specific  
12 exceptions’ to a statute’s applicability, it ‘proves’ that absent those exceptions, the  
13 statute generally applies.”); *see also, e.g., Gomes v. Hyde*, No. 1:25-CV11571-  
14 JEK, 2025 WL 1869299, at \*6 (D. Mass. July 7, 2025) (“inadmissibility on one of  
15 the three grounds specified in Section 1226(c)(1)(E)(i) is not by itself sufficient to  
16 except [a noncitizen] from Section 1226(a)’s discretionary detention framework”).  
17

18           28. Second, the INA provides for mandatory detention of certain categories of  
19 noncitizens “seeking entry into the United States” under 8 U.S.C. § 1225(b).  
20 *Jennings*, 583 U.S. at 297; see § 1225(b) (“Inspection of applicants for admission”).  
21 In *Jennings*, the Supreme Court explained that this mandatory scheme applies “at  
22

1 the Nation’s borders and ports of entry, where the Government must determine  
2 whether a[] [noncitizen] seeking to enter the country is inadmissible.” *Jennings*, 583  
3 U.S. at 287 (emphasis added). Noncitizens subject to mandatory detention under  
4 Section 1225 may not be released except “for urgent humanitarian reasons or  
5 significant public benefit” under the parole authority provided by 8 U.S.C. §  
6 1182(d)(5)(A). *See id.* at 300.  
7

9         29. Section 1225 has two subparts requiring mandatory detention: subsection  
10 (b)(1) mandates detention of noncitizens charged with enumerated grounds of  
11 inadmissibility and placed in expedited removal proceedings, and subsection (b)(2)  
12 mandates detention of recently arrived noncitizens seeking entry at a border or port  
13 of entry. *See infra*.  
14

15         30. Third, the INA provides for detention of noncitizens who have been  
16 ordered removed, including individuals in withholding-only proceedings, *see* 8  
17 U.S.C. § 1231(a)–(b).  
18

19         31. This case concerns whether Petitioner may be detained with a right to a  
20 bond hearing pursuant to Section 1226(a) (as the law requires) or whether he falls  
21 within mandatory detention as an “arriving alien” under Section 1225(b)(2) as DHS  
22 policy erroneously requires.  
23

24         32. Respondents have recently taken various steps seeking to expand their use  
25 of mandatory detention under Section 1225(b)(2) beyond its plain language.  
26

1 33. On July 8, 2025, ICE, “in coordination with” DOJ, announced a new  
2 policy that rejected well-established understanding of the statutory framework and  
3 reversed decades of practice. *See* U.S. Immigration and Customs Enforcement,  
4 Interim Guidance Regarding Detention Authority for Applicants for Admission  
5 (July 8, 2025), [https://www.aila.org/ice-memo-interimguidance-regarding-](https://www.aila.org/ice-memo-interimguidance-regarding-detention-authority-for-applications-for-admission)  
6 [detention-authority-for-applications-for-admission](https://www.aila.org/ice-memo-interimguidance-regarding-detention-authority-for-applications-for-admission).  
7  
8

9 34. The new policy claims that all persons who entered the United States  
10 without inspection shall now be deemed “applicants for admission” under 8 U.S.C.  
11 § 1225 and therefore are subject to mandatory detention under § 1225(b)(2)(A). The  
12 policy applies regardless of when a person is apprehended and affects those who  
13 have resided in the United States for months, years, and even decades.  
14  
15

16 35. On September 5, 2025, the Board of Immigration Appeals (BIA)  
17 published a decision adopting this same position. *See Matter of Yajure Hurtado*, 29  
18 I&N Dec. 216 (BIA 2025). That decision holds that all noncitizens who entered the  
19 United States without admission or parole are considered applicants for admission  
20 and are ineligible for immigration judge bond hearings.  
21  
22

## 23 ***II. Respondent’s Policy on Section 1225(b)(2) Is Incorrect***

24 36. Respondent’s policy that all undocumented noncitizens who entered  
25 without inspection are considered applicants for admission and subject to mandatory  
26 detention under Section 1225(b)(2)(A) is incorrect. Statutory text, statutory  
27  
28

1 framework, Congressional intent, longstanding practice of the agency, and decisions  
2 of many federal courts across the nation – including this one – all limit Section  
3 1225(b)(2)’s scope to recently arrived noncitizens seeking admission at a border or  
4 port of entry.  
5

6  
7 *a. Statutory Text*

8 37. The text of Section 1225, along with its placement in the overall detention  
9 scheme of the INA, make clear that the terms “applicant for admission” and “seeking  
10 admission” in Section 1225(b)(2) do not include individuals who have entered  
11 without inspection and are apprehended when already inside the United States.  
12

13 38. Section 1225 is titled: “Inspection by immigration officers; expedited  
14 removal of inadmissible arriving aliens; referral for hearing.” (emphasis added). As  
15 courts have recognized, “[t]he added word of ‘arriving’ indicates that the statute  
16 governs ‘arriving’ noncitizens, not those present already.” *Beltran Barrera v. Tindall*,  
17 No. 3:25-CV-541-RGJ, 2025 WL 2690565, at \*4 (W.D. Ky. Sept. 19, 2025) (citing  
18 *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425, at \*5 (E.D. Mich.  
19 Sept. 9, 2025)). This limitation is particularly clear when compared to Section  
20 1226’s general title: “Apprehension and detention of aliens.”  
21  
22  
23  
24

25 39. Further, Section 1225(b)(2)’s specific subheading, “Inspection of Other  
26 Aliens,” subsection 1225(b)(2)(B)’s mention of “crewm[e]n” and “stowaway[s],”  
27 and subsection 1225(b)(2)(C)’s use of the active language “arriving,” reinforce the  
28

1 limited scope of Section 1225(b)(2)'s applicability to those who have recently  
2 arrived at a border or port of entry.

3  
4 40. Finally, the term "seeking" in "seeking admission" "implies action –  
5 something that is currently occurring, and in this instance, would most logically  
6 occur at the border upon inspection." *Lopez-Campos*, 2025 WL 2496379, at \*6 (E.D.  
7 Mich. Aug. 29, 2025); *see also Beltran Barrera*, 2025 WL 2690565, at \*4.  
8 Noncitizens who are present in the country for years are not "seeking admission."  
9 *Lopez-Campos*, at \*6; *Beltran Barrera*, at \*4.  
10

11  
12 *b. Statutory Framework*

13  
14 41. The statutory framework further supports that Section 1225(b)(2) does not  
15 apply to noncitizens, like Petitioner, who has lived in the United States for years and  
16 who was apprehended and placed in detention while residing within the United  
17 States.  
18

19 42. The INA's entire framework is premised on Section 1225 governing  
20 detention of "arriving [noncitizens]" while Section 1226 "applies to [noncitizens]  
21 already present in the United States." *Jennings*, 583 U.S. at 288, 301; *see also Lopez*  
22 *Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588, at \*8 (S.D.N.Y.  
23 Aug. 13, 2025) ("[T]he line historically drawn between sections 1225 and 1226,  
24 which makes sense of their text and the overall statutory scheme, is that section 1225  
25 governs detention of non-citizens 'seeking admission into the country,' whereas  
26  
27  
28

1 section 1226 governs detention of non-citizens ‘already in the country.’”) (*citing*  
2 *Jennings*, 583 U.S. at 288-89); *Martinez v. Hyde*, 2025 WL 2084238, at \*8 (D. Mass.  
3 July 24, 2025) (“The idea that a different detention scheme would apply to non-  
4 citizens ‘already in the country,’ as compared to those ‘seeking admission into the  
5 country,’ is consonant with the core logic of our immigration system”) (*citing*  
6 *Jennings*, 583 U.S. at 289).

9  
10 43. A fundamental principle of statutory construction is that courts must  
11 interpret statutes to give meaning to all provisions and avoid reading out or rendering  
12 superfluous any single provision. *Corley v. United States*, 556 U.S. 303, 314 (2009)  
13 (“one of the most basic interpretive canons . . . [a] statute should be construed so that  
14 effect is given to all its provisions, so that no part will be inoperative or superfluous,  
15 void or insignificant[.]”). The government’s current reading of Section 1225(b)(2)  
16 violates this principle.

19 44. Section 1226(c) includes carve outs for certain categories of inadmissible  
20 noncitizens, who would otherwise fall under Section 1226(a), that are instead subject  
21 to mandatory detention. 8 U.S.C. § 1226(c)(1)(A), (D), (E). The inclusion of these  
22 carve outs in Section 1226(c) indicates that, contrary to Respondents’ interpretation,  
23 there are noncitizens who have not been admitted and that are not governed by  
24 Section 1225’s mandatory detention scheme. Indeed, if the government’s  
25 interpretation were correct, it would render these portions of Section 1226(c)

1 superfluous since those same individuals would already be subject to mandatory  
2 detention under Section 1225(b)(2).  
3

4 45. The recent amendment to Section 1226(c) confirms this statutory  
5 framework. Just this year, Congress passed the Laken Riley Act, which added  
6 additional categories of Section 1226(a) carve outs that are now subject to mandatory  
7 detention under Section 1226(c). Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3  
8 (2025); 8 U.S.C. § 1226(c)(1)(E). Specifically, the Laken Riley Act mandates the  
9 detention of noncitizens who are inadmissible under §§ 1182(a)(6)(A) (noncitizens  
10 “present in the United States without being admitted or paroled”), 1182(a)(6)(C)  
11 (misrepresentation), or 1182(a)(7) (lacking valid documentation) and who have been  
12 arrested for, charged with, or convicted of certain crimes. *Id.* If Section 1225(b)(2)  
13 were already meant to subject these groups of inadmissible noncitizens to mandatory  
14 detention, it would render this portion of the Laken Riley Act redundant. *See Beltran*  
15 *Barrera*, 2025 WL 2690565, at \*4; *LopezCampos*, 2025 WL 2496379, at \*8.  
16  
17  
18  
19

20  
21 *c. Congressional Intent and Longstanding Agency Practice*

22 46. Congressional intent and longstanding historical practice underscore  
23 Petitioner’s reading of the statute.  
24

25 47. The current detention system has been in place since the passage of the  
26 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996,  
27 Pub. L. No. 104–208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–  
28

1 583, 3009–585.

2  
3 48. Following the enactment of the IIRIRA, the Executive Office for  
4 Immigration Review drafted new regulations explaining that, in general, people who  
5 entered the country without inspection were not considered detained under Section  
6 1225 and that they were instead detained under Section 1226(a) and eligible for bond  
7 and bond redetermination. *See* 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

8  
9 49. In the decades that followed, most people who entered without inspection  
10 and were apprehended inside the United States were detained under Section 1226(a)  
11 and received bond hearings, unless their criminal history rendered them ineligible.  
12 That practice was consistent with many more decades of prior practice, in which  
13 noncitizens who were not deemed “arriving” were entitled to a custody hearing  
14 before an immigration judge or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994);  
15 see also H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that Section 1226(a)  
16 simply “restates” the detention authority previously found at Section 1252(a)).  
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21 *d. Recent Federal Court Decisions Confirming Petitioner’s Position*

22 50. Numerous federal courts have reached conclusions consistent with  
23 Petitioner’s position, with more reaching the same conclusion nearly every day.  
24

25 51. For example, after immigration judges in Tacoma, Washington, stopped  
26 providing bond hearings for persons who entered the United States without  
27 inspection, the U.S. District Court in the Western District of Washington found that  
28

1 such a reading of the INA is likely unlawful, and that Section 1226(a), not Section  
2 1225(b), applies to noncitizens who are not apprehended upon arrival to the United  
3 States. *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239.

5 52. Other courts have reached the same conclusion, rejecting Respondent's  
6 erroneous interpretation of the INA both prior to and since ICE implemented its July  
7 8, 2025, interim guidance. *See, e.g., Arrazola-Gonzalez v Noem*, 5:25-cv-01789-  
8 ODW-DFM, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Torres Maldonado v.*  
9 *Olson, et al*, Case No. 1:25-cv-12762, ECF No. 16 (N.D. Ill. Oct 24, 2025) (Daniels,  
10 J.); *Patel v. Crowley*, No. 25 C 11180, 2025 WL 2996787 (N.D.Ill. Oct. 24, 2025)  
11 (Cummings, J.); *Sanchez v. Holt*, Case No. 1:25-cv-12453, ECF No. 16 (N.D. Ill.  
12 Oct 24, 2025) (Jenkins, J.); *Ochoa Ochoa v. Noem, et al*, Case No. 1:25-cv10865,  
13 EFF No. 20 (N.D. Ill. Oct. 16, 2025) (Jenkins, J.); *GZT et al v. Smith et al*, Case No.  
14 25- C-12802, ECF No. 14 (N.D. Ill. Oct. 21, 2025) (Ellis, J.); *Jose Alejandro v.*  
15 *Olson et al*, 1:25-cv02027-JPH-MKK (S.D. Ind. Oct. 11, 2025); *H.G.V.U. v. Smith*,  
16 Case No. 1:25-cv-10931, ECF No. 34 (N.D. Ill. Oct. 20, 2025) (Coleman, J.); *Gomes*  
17 *v. Hyde*, 2025 WL 1869299, at \*8 (D. Mass. July 7, 2025); *Martinez v. Hyde*, 2025  
18 WL 2084238, at \*8 (D. Mass. July 24, 2025); *Lopez Benitez v. Francis*, No. 25 CIV.  
19 5937 (DEH), 2025 WL 2371588, at \*8 (S.D.N.Y. Aug. 13, 2025); *Garcia Jimenez*  
20 *v. Kramer*, No. 4:25-cv-03162-JFB-RCC, 2025 WL 2374223 (D. Neb. Aug. 14,  
21 2025); *Aguilar Maldonado v. Olson*, No. 25-CV-3142 (SRN/SGE), 2025 WL

1 2374411 (D. Minn. Aug. 15, 2025); *Jacinto v. Trump, et al.*, 4:25-cv-03161-JFB-  
2 RCC, 2025 WL 2402271 (D. Neb. August 19, 2025); *Leal-Hernandez v. Noem*, 1:25-  
3 cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Lopez-Campos*, 2025  
4 WL 2496379; *Herrera Torralba v. Knight*, 2:25-cv-03166-RFBDJA, 2025 WL  
5 2581792 (D. Nev. Sept. 5, 2025).

8 53. The BIA's decision in *Yajure Hurtado* on September 5, 2025 has also not  
9 impacted the District Courts' decisions rejecting Respondents' position. *See, e.g.*,  
10 *Patel v. Crowley*, No. 25 C 11180, 2025 WL 2996787, at \*1 (N.D.Ill. Oct. 24, 2025)  
11 (finding the decision in *Matter of Yajure Hurtado* unpersuasive for several reasons,  
12 including the BIA's inconsistent view, its conflict with implementing regulation, and  
13 district courts' overwhelming rejection of its expansive interpretation of 1225(b));  
14 *Patel v. Crowley*, No. 25 C 11180, 2025 WL 2996787, at \*1 (N.D.Ill. Oct. 24, 2025)  
15 (finding the decision in *Matter of Yajure Hurtado* unpersuasive for several reasons,  
16 including the BIA's inconsistent view, its conflict with implementing regulation, and  
17 district courts' overwhelming rejection of its expansive interpretation of 1225(b));  
18 *Ochoa Ochoa v. Noem et al*, 1:25-cv-10865 (N.D. Ill. Oct. 16, 2025) (rejecting  
19 *Matter of Yajure Hurtado* as it is non-binding and unpersuasive under *Loper Bright*  
20 *Enters. v. Raimondo*, 603 U.S. 369, 413 (2024) given the BIA's inconsistent views);  
21 *Singh v. Lewis*, 2025 WL 2699219, at \*3 (disagreeing with BIA's analysis and  
22 according no deference under *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 413  
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1 (2024)); *Beltran Barrera*, 2025 WL 2690565, at \*5 (same); *Pizarro Reyes v.*  
2 *Raycraft*, 2025 WL 2609425, at \*6-8 (same); *Sampiao v. Hyde*, 2025 WL 2607924,  
3 at \*8 n.11 (D. Mass. Sept. 9, 2025) (same); *Aceros v. Kaiser*, No. 25-CV-06924-  
4 EMC (EMC), 2025 WL 2637503, at \*9 (N.D. Cal. Sept. 12, 2025) (same).

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7 ***III. Petitioner's Detention Violates the Immigration and Nationality Act***

8 54. Petitioner's detention is not authorized under Section 1225(b)(2). As  
9 discussed above, mandatory detention under Section 1225(b)(2) applies only to  
10 recently arrived noncitizens seeking admission at a border or port of entry, not  
11 individuals like Petitioner who entered without inspection, were released or were  
12 never encountered, and were later detained inside the country. As such, Petitioner is  
13 not subject to mandatory detention under Section 1225(b)(2).  
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16 55. Petitioner's detention is not authorized under Section 1226(a), either. As  
17 discussed above, Section 1226(a)'s discretionary detention framework requires a  
18 bond hearing to make an individualized custody determination based on Petitioner's  
19 risk of flight or dangerousness. Here, Respondents have failed to provide such a  
20 hearing. Further, there is no information indicating that Petitioner is a flight risk or  
21 danger to the community.  
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25 56. Lacking any statutory basis for this detention, Respondent must release  
26 Petitioner or, in the alternative, promptly hold a bond hearing to determine whether  
27 he should remain detained.  
28

1 ***IV. Due Process Clause***

2 57. Noncitizens are entitled to due process of the law under the Fifth  
3 Amendment. *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507  
4 U.S. 292, 306 (1993)). To determine whether civil detention violates a noncitizen's  
5 Fifth Amendment due process rights, courts apply the three-part test in *Mathews v.*  
6 *Eldridge*, 424 U.S. 319 (1976).  
7

8  
9 58. Under *Mathews*, courts weigh the following three factors: 1) “the private  
10 interest that will be affected by the official action;” 2) “the risk of an erroneous  
11 deprivation of such interest through the procedures used, and the probable value, if  
12 any, of additional or substitute procedural safeguards;” and 3) “the Government’s  
13 interest, including the function involved and the fiscal and administrative burdens  
14 that the additional or substitute procedural requirement would entail.” 424 U.S. at  
15 335.  
16  
17

18  
19 ***a. Private Interest***

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21 59. As to the first *Mathews* factor, “[t]he interest in being free from physical  
22 detention” is “the most elemental of liberty interests.” *Hamdi v. Rumsfeld*, 542 U.S.  
23 507, 529, 531 (2004). Petitioner has been detained at ICE’s IAH Secure Adult  
24 Detention Facility, in Livingston, Texas. This detention prevents Petitioner from  
25 supporting himself, and deprives him of any privacy and freedom of movement.  
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1           *b. Risk of Erroneous Deprivation*

2           60. As to the second Mathews factor, courts must “assess whether the  
3 challenged procedure creates a risk of erroneous deprivation of individuals’ private  
4 rights and the degree to which alternative procedures could ameliorate these risks.”  
5 *Gunaydin v. Trump*, No. 25-CV-01151 (JMB/DLM), 2025 WL 1459154, at \*8 (D.  
6 Minn. May 21, 2025). The current procedures cause an erroneous deprivation of  
7 Petitioner’s liberty interest in remaining free from detention.  
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11           61. As discussed above, the statutory text, statutory framework, Congressional  
12 intent, the longstanding practice of the agency, and the decisions of many federal  
13 courts across the nation leave no doubt that Section 1225(b)(2) applies only to  
14 recently arrived noncitizens seeking entry at a border or port of entry, not noncitizens  
15 who entered without inspection and were detained inside the country.  
16  
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18           62. Here, Petitioner was not arriving at a border or port of entry when he was  
19 detained, nor was he seeking admission. Instead, Petitioner entered without  
20 inspection, and lived in the United States for well over two years, actually nearly  
21 three decades, before being detained. As such, Petitioner is not subject to mandatory  
22 detention under Section 1225(b)(2).  
23  
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25           63. It is clear based on the foregoing that the government’s current procedure  
26 of subjecting Petitioner to mandatory detention under Section 1225(b)(2) creates a  
27 substantial risk of erroneous deprivation of Petitioner’s interest in being free from  
28

1 arbitrary confinement.

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3 64. Additionally, there are reasonable alternatives available for Respondent to  
4 pursue. As discussed above, 8 U.S.C. section 1226(a) applies to noncitizens facing  
5 charges of inadmissibility, including noncitizens like Petitioner who entered without  
6 inspection, were released or never apprehended, and were later detained while  
7 residing inside the country. As such, proper application of the INA's detention  
8 scheme allows for the possibility of detaining Petitioner under Section 1226(a), but  
9 first requires a bond hearing to make an individualized determination of flight risk,  
10 or dangerousness. Such a hearing has not occurred. Without it, the risk of erroneous  
11 deprivation of Petitioner's freedom is high. *See Singh v. Lewis*, 2025 WL 2699219,  
12 at \*9 ("the risk of erroneously depriving him of his freedom is high if the IJ fails to  
13 assess his risk of flight or dangerousness.").

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18 *c. Government Interest*

19 65. As to the third Mathews factor, the government's interest in maintaining  
20 the current procedure is minimal. The new interpretation of Section 1225(b)(2) –  
21 that people like Petitioner who have resided in the United States for years are now  
22 subject to mandatory detention – flies in the face of the statutory text, statutory  
23 framework, Congressional intent, almost three decades of prior practice, and the  
24 decisions of federal courts across the nation. Any government interest in public  
25 safety or ensuring that Petitioner attend future immigration proceedings would be

1 satisfied through proper application of Section 1226(a), which requires a bond  
2 redetermination hearing where an immigration judge will consider Petitioner's  
3 individualized facts and circumstances to determine whether he is a danger to the  
4 community or a flight risk.  
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6  
7 **CLAIMS FOR RELIEF**

8 **COUNT I - Violation of the Immigration and Nationality Act**

9  
10 66. Petitioner incorporates by reference the allegations of fact set forth in the  
11 preceding paragraphs.

12 67. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not  
13 apply to all noncitizens residing in the United States who are subject to the ground  
14 of inadmissibility for entering the U.S. without inspection. As relevant here, it does  
15 not apply to those who previously entered the country without inspection, and, if  
16 issued NTAs, were released without bond, and have been residing in the United  
17 States prior to being detained by Respondents. Such noncitizens are detained under  
18 § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231. Respondents'  
19 actions also violate § 1226(a) because, to date, Respondents have refused to consider  
20 Petitioner for bond or release on his own recognizance without ever demonstrating  
21 that Petitioner is a flight risk or danger to others.  
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26 68. The application of § 1225(b)(2) to Petitioner unlawfully mandates  
27 Petitioner's continued detention, and violates the Immigration and Nationality Act.  
28

1           **COUNT II - Violation of Due Process**

2           69. Petitioner repeats, re-alleged, and incorporates by reference each and  
3 every allegation in the preceding paragraphs as if fully set forth herein.  
4

5           70. The government may not deprive a person of life, liberty, or property  
6 without due process of law. *U.S. Const. amend. V*. “Freedom from imprisonment—  
7 from government custody, detention, or other forms of physical restraint—lies at the  
8 heart of the liberty that the Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690  
9 (2001).  
10

11           71. Petitioner has a fundamental interest in liberty and being free from official  
12 restraint.  
13

14           72. Petitioner may only be subject to discretionary detention under 8 U.S.C.  
15 § 1226, which provides for release on bond. Respondents now erroneously detain  
16 Petitioner under the mandatory provision in § 1225(b)(2). Respondents’ detention of  
17 Petitioner without a bond hearing to determine flight risk or danger to others violates  
18 his due process rights.  
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22           73. BURDEN SHIFTING: While Petitioner has an excellent application for  
23 bond under the ordinary process, when DHS has unconstitutionally detained him  
24 without access to a bond hearing, an overwhelming consensus of courts place the  
25 *burden on the government* to prove by clear and convincing evidence that the  
26 detainee poses a danger or is flight risk to justify further detention. *See Gonzalez v.*  
27

1 *Barr*, 955 F.3d 762, 772 (9th Cir. 2020); *Ochoa Ochoa v. Noem et al*, 1:25-cv-10865  
2 (N.D. Ill. Oct. 16, 2025); *Sanchez v. Holt*, Case No. 1:25-cv-12453, ECF No. 16  
3 (N.D. Ill. Oct 24, 2025; *G.Z.T. et al v. Smith et al*, Case No. 25-C-12802, ECF No.  
4 14 (N.D. Ill. Oct. 21, 2025); *Velasco Lopez v. Decker*, 978 F.3d 842, 855 (2d Cir.  
5 2020); *Hernandez-Lara v. Lyons*, 10 F.4th 19 (1st Cir. 2021); *Lopez-Arevelo v. Ripa*,  
6 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025) (ordering a prompt bond hearing or  
7 release); *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025) (same);  
8 *Roman v. Noem*, 2025 WL 2710211 (D. Nev. Sept. 23, 2025) (same). This modified  
9 the typical burden of proof at an immigration bond hearing where the noncitizen  
10 often bears the burden of proof. *See* 8 C.F.R. § 236.1(c)(8).

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15 74. “The burden shifting [to the government] reflects the concern that a  
16 noncitizen ‘should not have to share the risk of error equally’ in the context of a due  
17 process violation and Petitioner’s ‘loss of liberty.’” *Ochoa Ochoa v. Noem et al*,  
18 1:25-cv-10865 (N.D. Ill. Oct. 16, 2025) *citing* *German Santos v. Warden Pike Cnty.*  
19 *Corr. Facility*, 965 F.3d 203, 214 (3d Cir. 2020) and *Lopez Santos v. Clesceri*, 2021  
20 WL 663180, at \*5 (N.D. Ill. Feb. 19, 2021). Accordingly, if Petitioner is not granted  
21 release, he should be granted a bond hearing before an immigration judge, and the  
22 Government should bear the burden of justifying ongoing detention by clear and  
23 convincing evidence of dangerousness or flight risk.  
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**PRAYER FOR RELIEF**

**WHEREFORE**, Petitioner prays that this Court grant the following relief:

a. Assume jurisdiction over this matter;

b. Immediately enjoin Respondents from moving any Petitioner outside of the United States or transferring Petitioner to any other federal judicial district.

c. Issue a writ of habeas corpus requiring Respondents provide Petitioner a bond hearing before the Conroe Immigration Court pursuant to 8 U.S.C. § 1226(a), within five days, in which the government shall bear the burden by clear and convincing evidence of dangerousness or flight risk to justify continued detention;

d. Declare that Petitioner’s continued detention violates the Immigration and Nationality Act, and the Due Process Clause of the Fifth Amendment;

e. Award Petitioner attorney’s fees and costs under the Equal Access to Justice Act (“EAJA”), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and

f. Grant any other and further relief that this court deems just and just and proper.

November 21, 2025

Respectfully submitted,

*/s/ Vital D’Carpio*

\_\_\_\_\_  
Vital D’Carpio  
Counsel for Petitioner

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**VERIFICATION**

Pursuant to 28 U.S.C. §§ 2242 and 1746, I declare under penalty of perjury that the facts set forth in the foregoing Petition for Habeas Corpus are true and correct based on information available at the time of this filing.

November 21, 2025

*/s/ Vital D'Carpio*

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Vital D'Carpio  
Counsel for Petitioner