UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

ISAAC SOLANO GARCIA *Petitioner*, vs. PAMELA BONDI, United States Attorney General; KRISTI NOEM, Secretary of the United States Department of Homeland Security; TODD M. LYONS, Director of United States Immigration and Customs Enforcement; SYLVESTER ORTEGA, Field Office Director for Detention and Removal, U.S. Immigration and Customs Enforcement; WAYMON BARRY, Warden, Karnes County Immigration Processing Center. *Respondents*.	§	Civ. No. 5:25-cv-01552 DHS File Number: [redacted] **PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241**

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I. INTRODUCTION AND BACKGROUND

1. This petition challenges the unlawful civil immigration detention of Petitioner Isaac Solano Garcia ("Mr. Solano Garcia"), a 47-year-old father of three U.S.-citizen children, ages 19, 21, and 24. Mr. Solano Garcia has lived in the United States for more than thirty years. ICE arrested him at his family home in Staten Island, New York, even though he had a valid New York State driver's license, valid employment authorization, and no criminal history. Exh. 1 (DHS Form I-213).
2. After his arrest, ICE transferred him from New York to Texas. He is now confined at the Karnes County Immigration Processing Center in Karnes City, Texas. Exh. 2 (ICE Locator Results). Despite counsel's request for a bond hearing, none has been scheduled, no orders have issued, and Mr. Solano Garcia has never had an opportunity to seek release before a neutral decisionmaker.
3. Mr. Solano Garcia works as a plumber and is the primary financial support for his household. His wife and three children all live in Staten Island, New York, and depend on his income, his vehicle, and his daily presence for transportation, caregiving, and support.
4. On October 22, 2024, he appeared for an individual (merits) hearing on his application for Cancellation of Removal for Certain Nonpermanent Residents under 8 U.S.C. § 1229b(b) ("42B"). At that hearing, the immigration judge (IJ) reserved decision and indicated he would request an accelerated immigrant visa number in light of the annual numerical cap on cancellation grants.[1] Following ICE's decision to transfer Mr. Solano Garcia from New

[1] Under 8 U.S.C. § 1229b(e)(1), the Attorney General may grant no more than 4,000 applications for cancellation of removal and suspension of deportation in any fiscal year. When the cap is close to being reached, the Office of the Chief Immigration Judge (OCIJ) instructs immigration judges to reserve decisions granting cancellation or suspension and designates a "cut-off date" after which decisions must be reserved until additional numbers become available. See Memorandum from MaryBeth Keller, Chief Immigration Judge, Exec. Office for Immigration Review, Operating Policies & Procedures Memorandum 17-04: Applications for Cancellation of Removal or Suspension of Deportation that are Subject to the Cap (Dec. 20, 2017), https://www.justice.gov/eoir/file/oppm17-04/download.

York to Texas, no further hearings have been scheduled. Exh. 3 (Automated Case Information). His case is effectively frozen while he remains detained far from his family and counsel.

5. DHS now asserts that 8 U.S.C. § 1225(b) mandates Mr. Solano Garcia's detention. But Congress created a separate detention framework in 8 U.S.C. § 1226(a) for interior arrests of long-time residents, which provides for discretionary bond and immigration-judge review. That is the statute that governs here. DHS's novel position—recently endorsed in *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216 (B.I.A. 2025)—contradicts the INA's text and structure and violates Due Process. It collapses Congress's dual-track detention scheme and converts civil immigration custody into categorical, mandatory detention for long-time residents who pose no danger and no meaningful risk of flight.
6. The human consequences are immediate and severe. Detention has upended the family's finances and caregiving, depriving the household of Mr. Solano Garcia's earnings, transportation, and daily participation in family life. His remote detention also impedes his ability to assist counsel, gather evidence, and pursue his pending 42B application. The Constitution, the INA, and basic principles of fairness do not permit detention on these facts and under the wrong statutory authority.
7. Mr. Solano Garcia respectfully requests that this Court grant the petition for a writ of habeas corpus under 28 U.S.C. § 2241, declare that 8 U.S.C. § 1226(a) governs his custody, and order his immediate release, or at a minimum an individualized bond hearing under § 1226(a) within three days, with the Government bearing the burden of justifying continued detention by clear and convincing evidence. In the alternative, he asks the Court to order

Respondents to show cause within three days why the writ should not issue. See 28 U.S.C. § 2243.

II. JURISDICTION AND VENUE

8. Petitioner is detained in civil immigration custody in Karnes County at the Karnes County Immigration Processing Center in Karnes City, Texas. *See* Exh. 2. He has been detained since or about, November 5, 2025.

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 where applicable Article I § 9, cl. 2 of the United States Constitution (Suspension Clause). This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., and the All Writs Act, 28 U.S.C. § 1651.

11. Venue is proper in the Western District of Texas under 28 U.S.C. § 1391, because at least one Respondent is in this District, Petitioner is detained in this District, and a substantial part of the events giving rise to the claims in this action took place in this District. Venue is also proper under 28 U.S.C. § 2243 because the immediate custodians of Petitioner reside in this District.

III. REQUIREMENTS OF 28 U.S.C. § 2243, WRIT OF HABEAS CORPUS ISSUANCE, RETURN, HEARING, AND DECISION

12. The Court either must grant the instant petition for writ of habeas corpus or issue an order to show cause to Respondents, unless Petitioner is not entitled to relief. If the Court issues an order to show cause, Respondents must file a response "within three days" unless this

Court permits additional time for good cause, which is not to exceed twenty days. 28 U.S.C. § 2243.

13. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . 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). The writ of habeas corpus, challenging illegality of detention, is reduced to a sham if the trial courts do not act within a reasonable time. *Rhueark v. Wade*, 540 F.2d 1282, 1283 (5th Cir. 1976); *Jones v. Shell*, 572 F.2d 1278, 1280 (8th Cir. 1978). Due to the nature of this proceeding, Petitioner asks this Court to expedite proceedings in this case as necessary and practicable for justice.

IV. PARTIES

14. Petitioner Isaac Solano Garcia is a 47-year-old citizen of Mexico. He last entered the without inspection or parole and has resided here continuously.

15. Respondent Pamela Bondi is named in her official capacity as Attorney General of the United States. She is responsible for the administration of the Executive Office for Immigration Review ("EOIR"), including policies that bear on immigration judges' jurisdiction over custody.

16. Respondent Kristi Noem is named in her official capacity as Secretary of the U.S. Department of Homeland Security ("DHS"). DHS is the department charged with administering and enforcing federal immigration laws. Secretary Noem is ultimately responsible for the actions of U.S. Immigration and Customs Enforcement ("ICE") and is a legal custodian of Petitioner.

17. Respondent Todd M. Lyons is named in his official capacity as Acting Director of ICE. He oversees ICE operations, including detention and removal, and is a legal custodian of Petitioner.

18. Respondent Sylvester Ortega is named in his official capacity as Field Office Director of the San Antonio ICE Field Office. He is responsible for ICE enforcement in this District and is a legal custodian of Petitioner.

19. Respondent Waymon Barry is named in his official capacity as Warden of the Karnes County Immigration Processing Center in Karnes City, Texas. He has immediate physical custody of Petitioner pursuant to an agreement with ICE to detain noncitizens.

20. Each Respondent is sued in his or her official capacity as a custodian and/or policymaker responsible for Petitioner's continued detention.

V. FACTS

21. Petitioner Isaac Solano Garcia ("Mr. Solano Garcia") is a 47-year-old father of three U.S.-citizen children, ages 19, 21, and 24. He first entered the United States without inspection on or about May 1995. He later departed on or about September 2003 and returned again without inspection on or about March 2004. Since that time, he has lived in the United States for more than twenty years and has long resided with his family in Staten Island, New York. On October 15, 2017, DHS issued him a Notice to Appear, placing him in removal proceedings, and he was released from immigration custody. He remained in the community with his family thereafter. He has no criminal history.

22. Mr. Solano Garcia works as a plumber and is the primary financial provider for his household. His wife and three U.S.-citizen children all live in Staten Island, New York, and depend on his income and presence for their financial and emotional stability.

23. Mr. Solano Garcia is in removal proceedings before the New York Immigration Court and has a pending application for Cancellation of Removal under INA § 240A(b) (Form EOIR-42B). On October 22, 2024, he appeared for his individual (merits) hearing on that application. At the conclusion of the hearing, the immigration judge reserved decision and indicated he would request an accelerated immigrant visa number in light of the annual numerical cap on cancellation grants. This practice is consistent with nationwide guidance requiring immigration judges to reserve decisions when the statutory cap is reached. *See* n. 1, supra. Since ICE transferred Mr. Solano Garcia from New York to Texas, no further proceedings have been scheduled and no decision has issued on his 42B application. *See* Exh. 2 (Automated Case Information). His case remains in post-hearing limbo while he is detained far from his family and counsel.

24. On November 5, 2025, ICE agents arrested Mr. Solano Garcia at his home in Staten Island, New York, pursuant to a Warrant for Arrest of Alien (Form I-200). *See* Exh. 1 (DHS Form I-213). At the time of his arrest, he possessed valid employment authorization and a valid New York State driver's license, reflecting his long-term authorization to work in the United States and compliance with state licensing requirements.

25. Following his arrest, ICE transferred Mr. Solano Garcia from New York to Texas. He is now confined at the Karnes County Immigration Processing Center in Karnes City, Texas, and remains detained there. *See* Exh. 2 (ICE Locator Results). He has been continuously detained since November 5, 2025. Despite his counsel's request for a bond hearing, none has been scheduled, no bond-related orders have issued, and he has never received an individualized custody determination before an immigration judge under 8 U.S.C. § 1226(a).

26. The transfer from New York to Karnes City—more than 1,500 miles from his home, his counsel, and the New York Immigration Court—severely impedes Mr. Solano Garcia's ability to protect his already-submitted Cancellation of Removal case. All of his family members, character witnesses, and other potential witnesses reside in New York. Detention in rural South Texas makes it extraordinarily difficult for him to meet with counsel, gather supplemental documentation, or respond to any further requests from the immigration court, and to secure live or even telephonic testimony from witnesses who lack the resources to travel such a great distance.

27. Since he was first placed in removal proceedings in 2017, Mr. Solano Garcia has complied with all immigration requirements. He has appeared at every scheduled immigration court hearing without fail, maintained valid employment authorization, and held a valid state driver's license. He has never failed to appear for an immigration hearing or ICE appointment and has never been arrested for any criminal offense. His decades-long residence, stable work history, and consistent compliance with immigration and state licensing requirements demonstrate that he is not a flight risk and that he has every incentive to continue appearing in his case if released from custody.

28. Despite these equities, and despite his long history of appearance and compliance, ICE continues to detain Mr. Solano Garcia without any meaningful opportunity to seek release on bond or other conditions of supervision before a neutral decisionmaker.

29. Petitioner remains detained because DHS has misclassified his custody as governed by 8 U.S.C. § 1225(b), rather than 8 U.S.C. § 1226(a), which governs interior arrests of long-time residents and provides for discretionary bond and immigration-judge review. That misclassification strips the immigration court of bond jurisdiction and has resulted in his

continued detention even though he presents neither danger to the community nor a risk of flight.

VI. LEGAL FRAMEWORK

A. Due Process

30. The Fifth Amendment's Due Process Clause applies to "all persons" within the United States, including noncitizens. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." *Id.* at 690. In the immigration context, detention is constitutionally justified only to prevent flight or protect the community. *Demore v. Kim*, 538 U.S. 510, 528 (2003).

B. Statutory Scheme

31. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.

32. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an immigration judge. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally entitled to a bond hearing at the outset of detention. *See* 8 C.F.R. §§ 1003.19(a), 1236.1(d). Noncitizens arrested, charged with, or convicted of certain crimes are subject to mandatory detention. *See* 8 U.S.C. § 1226(c).

33. 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 under § 1225(b)(2).

34. Last, the INA provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings. *See* 8 U.S.C. § 1231(a)–(b).

VII. ARGUMENT

A. Text, Practice, and Precedent Confirm § 1226(a) Applies to Interior Arrests

35. This case concerns the detention provisions at 8 U.S.C. §§ 1226(a) and 1225(b)(2).

36. Congress enacted §§ 1226(a) and 1225(b)(2) in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. Pub. L. No. 104–208, div. C, §§ 302–03, 110 Stat. 3009-546, 3009-582 to 3009-583, 3009-585. Congress most recently amended § 1226 in the Laken Riley Act. Pub. L. No. 119-1, 139 Stat. 3 (2025).

37. After IIRIRA, EOIR promulgated regulations clarifying that, in general, people who entered without inspection and were placed in § 240 proceedings are detained under § 1226(a), not § 1225. Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10,312, 10,323 (Mar. 6, 1997).

38. For decades thereafter, noncitizens who entered without inspection and were placed in standard removal proceedings received bond hearings unless covered by § 1226(c). That practice aligned with earlier law in which non-arriving noncitizens were entitled to a custody hearing before an immigration judge or other officer. *See* 8 U.S.C. § 1252(a) (1994); H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting § 1226(a) "restates" prior detention authority).

39. In *Jennings v. Rodriguez*, DHS acknowledged that individuals already in the United States who are not apprehended near the border or immediately after entry fall under § 1226(a), not § 1225(b). *See* Transcript of Oral Argument at 7–8, *Jennings v. Rodriguez*, 583 U.S. 281 (2018) (No. 15-1204) (Solicitor General confirming that those not detained within 100 miles or within 14 days are held under § 1226(a) and receive bond hearings). Having

prevailed while advancing that position, DHS's new litigation stance to the contrary lacks persuasive force.

40. On July 8, 2025, ICE announced new "Interim Guidance Regarding Detention Authority for Applicants for Admission,"[2] reversing longstanding understanding and practice.

41. That guidance asserts that all persons who entered without inspection are subject to § 1225(b)(2)(A) mandatory detention regardless of when or where apprehended and even after years of residence. *See* Todd M. Lyons, Interim Guidance Regarding Detention Authority for Applicants for Admission (July 8, 2025).

42. On September 5, 2025, the BIA adopted the same position in *Matter of Yajure-Hurtado*, holding that noncitizens who entered without admission or parole fall under § 1225(b)(2)(A) and are ineligible for immigration-judge bond hearings. 29 I. & N. Dec. 216 (B.I.A. 2025).

43. A "tsunami" of federal courts have rejected this new interpretation and have declined to follow *Yajure-Hurtado* where it conflicts with the INA's text and structure. [3]

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

[3] *See, e.g.*, *Belsai v. Bondi, et al.*, No. 25-cv-3862 (KMM/EMB), 2025 WL 2802947 (D. Minn. Oct. 1, 2025); *Lepe v. Andrews*, No. 1:25-CV-01163-KES-SKO (HC), 2025 WL 2716910 (E.D. Cal. Sept. 23, 2025); *Giron Reyes v. Lyons*, No. C25-4048-LTS-MAR, --- F.Supp.3d ---, 2025 WL 2712417 (N.D. Iowa Sept. 23, 2025); *Salazar v. Dedos*, No. 1:25- cv-00835-DHU-JMR, 2025 WL 2676729 (D. N.M. Sept. 17, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425, at *7 (E.D. Mich. Sept. 9, 2025); *Chanaguano Caiza v. Scott*, 25-cv-00500, 2025 WL 2806416, at *3 (D. Me. Oct. 2, 2025); *Luna Quispe v. Crawford, et al.*, No. 1:25-CV-1471-AJT-LRV, 2025 WL 2783799, at *6 (E.D. Va. Sept. 29, 2025); *Vazquez v. Bostock*, No. 25-cv-05240, 2025 WL 2782499, at *27 (W.D. Wash. Sept. 30, 2025); *J.U. v. Maldonado*, 25-CV-04836, 2025 WL 2772765, at *5 (E.D.N.Y. Sept. 29, 2025); *Rivera Zumba v. Bondi*, No. 25-cv-14626, 2025 WL 2753496, at *7 (D.N.J. Sept. 26, 2025); *Lopez v. Hardin*, No. 25-cv-830, 2025 WL 2732717, at *2 (M.D. Fla. Sept. 25, 2025); *Giron Reyes v. Lyons*, No. C25-4048, 2025 WL 2712427, at *5 (N.D. Iowa, Sept. 23, 2025); *Singh v. Lewis*, No. 25-cv-96, 2025 WL 2699219, at *3 (W.D. Ky. Sept. 22, 2025); *Pablo Sequen v. Kaiser*, No. 25-cv-06487, 2025 WL 2650637, at *7-8 (N.D. Cal. Sept. 16, 2025); *Alvarez-Chavez v. Kaiser*, 25-cv-06984-LB 2025 WL 2909526 (N.D. Cal., Oct. 9, 2025); *Cerritos-Echevarria v Bondi*, No. CV-25-03252-PHX-DWL (ESW), 2025 WL 2821282 (D. Ariz. Oct. 3, 2025); *Padron-Covarrubias v. Vergara*, 5:25-cv-00112, (S.D. Tex. Oct. 8, 2025); *Santiago-Santiago v. Bondi*, EP-25-CV-361-KC, 2025 WL 2792588, (W.D. Tex. Oct. 2, 2025); *Cardin-Alvarez v. Rivas*, CV 25-02943 PHX GMS (CDB), 2025 WL 2898389 (D. Ariz. Oct. 7, 2025); *Buenrostro-Mendez v. Bondi, et al.*, No. CV H-25-3726, 2025 WL 2886346, at *3 (S.D. Tex. Oct. 7, 2025); *Hernandez Lucero v. Bondi*, No. 4:25-cv-03981 (S.D. Tex Oct. 23, 2025); *Ortiz-Ortiz v. Bondi*, No. 5:25-cv-00132 (W.D. Tex. Oct. 15, 2025). *But see Chavez v. Noem*, 3:25-cv-02325-CAB-SBC, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025 ("by the plain language of

44. In this District, courts have repeatedly ordered relief. *See e.g. Gonzalez Guerrero v. Noem*, No. 1:25-cv-01334-RP (W.D. Tex. Oct. 27, 2025) (preliminary injunction from this Division holding that § 1226—not § 1225(b)(2)—governs custody for long-resident noncitizens arrested in the interior because a broad reading of § 1225(b)(2) would render § 1226 superfluous); *Pereira-Verdi v. Lyons*, No. 5:25-cv-01187-XR (W.D. Tex. Oct. 10, 2025) (TRO requiring § 1226 process and enjoining re-detention without notice and a pre-deprivation hearing); *Hernandez-Ramiro v. Bondi*, No. 5:25-cv-01207-XR (W.D. Tex. Oct. 15, 2025) (granting TRO ordering a prompt bond hearing under § 1226, with the Government bearing the burden of showing danger or flight risk, or release if no hearing is set); *Santiago-Santiago v. Noem*, No. 3:25-cv-361-KC, 2025 WL 2792588 (W.D. Tex. Oct. 2, 2025) (granting habeas for a DACA recipient misclassified under § 1225(b)); *Alvarez Martinez v. Noem*, No. 5:25-cv-01007-JKP, 2025 WL 2598379 (W.D. Tex. Sept. 8, 2025) (granting habeas and holding the automatic stay of an IJ's bond order violates due process); *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025) (granting habeas, rejecting §§ 1252(g) and 1252(b)(9) as jurisdictional bars, and ordering a bond hearing with the Government bearing a clear-and-convincing burden of flight risk or danger); *Martinez v. Noem*, No. 3:25-cv-430-KC, 2025 WL 2965859 (W.D. Tex. Oct. 21, 2025) (holding that even assuming § 1225(b) applies, due process under *Mathews* requires an individualized bond hearing); *Souza Vieira v. De-Anda Ybarra*, No. 3:25-cv-432-DB, 2025 WL 2937880 (W.D. Tex. Oct. 16, 2025) (following *Lopez-Arevelo*'s jurisdictional analysis and granting habeas relief); *Hernandez-Fernandez v.*

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§ 1225(a)(1) the petitioners are "applicants for admission" and thus subject to the mandatory detention provisions of "applicants for admission" under § 1225(b)(2)[.]"); *Vargas-Lopez v. Trump, et al.*, 8:25CV526 2025 WL 2780351 (D. Neb. Sept. 29, 2025) (the petitioner is an alien within the "catchall" scope of § 1225(b)(2) subject to detention without possibility of release on bond through a proceeding on removal under § 1229a, per 8 U.S.C. § 1225(b)(2)).

Lyons, No. 5:25-CV-00773-JKP, 2025 WL 2976923 (W.D. Tex. Oct. 21, 2025) (granting habeas relief to an interior arrestee and requiring custody to be governed by § 1226 rather than § 1225(b)); *Erazo Rojas v. Noem*, No. 3:25-cv-443-KC (W.D. Tex. Oct. 30, 2025) (granting habeas in part and requiring the Government to provide a prompt bond hearing at which it bears the clear-and-convincing burden or else release Petitioner under reasonable supervision); *Dominguez Vega v. Thompson*, No. 5:25-cv-01439-XR (W.D. Tex. Nov. 19 2025); *Hernandez-Hervert v. Bondi*, No. 1:25-cv-01763-RP (W.D. Tex. Nov. 14, 2025); *Cardona-Lozano v. Noem*, No. 1:25-cv-01784-RP (W.D. Tex. Nov. 14, 2025).

14. These decisions reflect a clear judicial consensus that the government's reliance on § 1225(b)(2) is misplaced where § 1226(a) applies.

15. The plain text confirms that outcome. Section 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed." Hearings to decide inadmissibility or deportability occur under § 1229a.

16. Section 1226 also expressly addresses persons charged as inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Specific mandatory carve-outs confirm that, absent those exceptions, § 1226(a) governs and bond is available. *See Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010); *Gomes*, 2025 WL 1869299, at *7.

17. Section 1226 therefore applies to people charged as inadmissible who are already in the interior, including those present without admission or parole.

18. By contrast, § 1225(b) addresses inspection at the border and recent arrivals who are "seeking admission." 8 U.S.C. § 1225(b)(2)(A). The Supreme Court has described that

mandatory detention scheme as operating "at the Nation's borders and ports of entry." *Jennings v. Rodriguez*, 583 U.S. 281, 287, 846 (2018). That is not this case.

19. Section 1226(a) is the default custody authority "pending a decision on whether the alien is to be removed," which describes § 240 proceedings like Petitioner's. 8 U.S.C. § 1226(a). Section 1226(c) then carves out narrow mandatory categories, some tied to inadmissibility. 8 U.S.C. § 1226(c). Reading § 1225(b)(2) to control here would render § 1226(a)'s bond framework and § 1226(c)'s carve-outs superfluous.

20. Section 1225(b)(2)(A) uses present-tense inspection language. It applies when an officer determines a person "is seeking admission" and "is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). *Jennings* confirms this scheme operates at the border. 583 U.S. at 287, 846.

21. Deference does not salvage Respondents' reading. After *Loper Bright*, courts do not defer to agency interpretations simply because a statute is complex. They apply the best reading. *Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244, 2262–63 (2024). *Yajure-Hurtado* is unpersuasive because it treats anyone never "admitted" as forever "seeking admission," contrary to § 1225's present-tense text and § 1226's structure. 29 I. & N. Dec. at 221.

22. The constitutional backdrop points the same direction. Civil immigration detention is constrained by the Fifth Amendment. Persons facing significant restraints on liberty retain a protected interest and are entitled to meaningful process. At minimum, detention under § 1226 requires a prompt, individualized bond hearing with the Government bearing a clear and convincing burden. *See Zadvydas v. Davis*, 533 U.S. 678, 690–96 (2001); *Demore v. Kim*, 538 U.S. 510, 528–31 (2003); *Mathews v. Eldridge*, 424 U.S. 319, 333–35, 343–49 (1976).

23. The Court should hold that § 1226(a) governs Petitioner's custody and order his immediate release, or at minimum require a prompt § 1226(a) bond hearing with the Government bearing the clear-and-convincing burden. *See* 8 U.S.C. § 1226(a); *Jennings*, 583 U.S. at 297, 302–03; *Zadvydas*, 533 U.S. at 690–96.

B. Section 1226(a) governs this interior arrest. DHS's § 1225(b) theory fails on the text and in practice.

24. Petitioner was arrested in the interior and is in § 240 proceedings. Section 1226(a) controls and supplies bond jurisdiction. *Jennings*, 583 U.S. at 297, 302–03.

25. Federal courts confronting DHS's new theory have rejected it and ordered relief, concluding that § 1226(a) governs noncitizens already in the country. *See*, e.g., *Rodriguez v. Bostock*, No. 3:25-cv-05240-TMC, 2025 WL 1193850, at *11–16 (W.D. Wash. Apr. 24, 2025); *Martinez v. Noem*, No. 3:25-cv-430-KC, 2025 WL 2965859; *Gonzalez Guerrero v. Noem*, No. 1:25-cv-01334-RP (W.D. Tex. Oct. 27, 2025).

26. The Laken Riley Act confirms that Congress preserved § 1226(a)'s discretionary bond regime for most inadmissible entrants arrested in the interior by adding a narrow new mandatory category under § 1226(c)(1)(E). If § 1225(b) already mandated detention for all inadmissible entrants, § 1226(c)(1)(E) would be redundant. *See Corley v. United States*, 556 U.S. 303, 314 (2009); *Van Buren v. United States*, 593 U.S. 374, 393 (2021). Congress legislated against decades of practice applying § 1226(a) to interior arrests, and courts presume amendments harmonize with that practice. *Monsalvo v. Bondi*, 604 U.S. ___, 145 S. Ct. 1232, 1242 (2025).

27. *Yajure-Hurtado* does not compel a different result. *Jennings* construed statutory text and left open constitutional claims. 583 U.S. at 303. Post-*Loper Bright*, courts interpret the INA de novo. *Loper Bright*, 144 S. Ct. at 2262–63.

28. Longstanding agency materials confirm that interior encounters without admission were treated under § 236(a) and were "eligible for bond and bond redetermination." 62 Fed. Reg. at 10,323. DHS historically limited "applicant for admission" to encounters within a short time and distance from the border. *See Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 121, 130 n.2 (2020) (describing the 14-day/100-mile policy).

29. Arrest authority reinforces the divide. Warrantless arrests are narrowly permitted under 8 U.S.C. § 1357(a). Otherwise, interior arrests proceed on warrant (Form I-200) and fall under § 236(a), which is the case here. *See Matter of Mariscal-Hernandez*, 28 I. & N. Dec. 666, 668–71 (B.I.A. 2022). Petitioner's arrest was effectuated under an I-200 warrant, which places him within § 1226(a). Exh. 1.

30. Statutes must be read in context and given effect to every clause and word. *Gundy v. United States*, 588 U.S. 128, 141 (2019). *United States ex rel. Polansky v. Exec. Health Res., Inc.*, 599 U.S. 419, 432 (2023). Respondents' view collapses §§ 1225 and 1226, nullifies § 1226(c), and contradicts the statues structure.

C. Remedy

31. The Court should (1) declare that § 236(a), not § 235, governs custody; (2) order immediate release; or, in the alternative, (3) require a prompt, recorded § 236(a) bond hearing placing a clear-and-convincing burden on DHS.

VIII. CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION
Violation of the Due Process Clause of the Fifth Amendment of the United States Constitution

32. Petitioner repeats and incorporates by reference all allegations above as though set forth fully herein.

33. The Due Process Clause asks whether the government's deprivation of a person's life, liberty, or property is justified by a sufficient purpose. Here, there is no question that the government has deprived Petitioner of his liberty.

34. Mr. Solano Garcia's continued detention violates his right to substantive and procedural due process guaranteed by the Fifth Amendment to the U.S. Constitution.

35. The Due Process Clause of the Fifth Amendment to the U.S. Constitution provides that "[n]o person shall…be deprived of life, liberty, or property without due process of law." As a noncitizen who shows well over "two years" physical presence in the United States (indeed he has 24 years), Mr. Solano Garcia is entitled to Due Process Clause protections against deprivation of liberty and property. *See Zadvydas*, 533 U.S. at 693 ("[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent."). Any deprivation of this fundamental liberty interest must be accompanied not only by adequate procedural protections, but also by a "sufficiently strong special justification" to outweigh the significant deprivation of liberty. *Id.* at 690.

36. Respondents have deprived Mr. Solano Garcia of his liberty interest protected by the Fifth Amendment by detaining since since November 5, 2025.

37. Mr. Solano detention is improper because he has been categorically deprived of the opportunity for a meaningful bond hearing.[4] A hearing is, at its core, the right to be heard. Yet under *Matter of Yajure-Hurtado*, the Immigration Judge is bound to conclude that he

[4] *See Jennings v. Rodriguez*, 583 U.S. 281, 298–99 (2018) (recognizing that prolonged detention without an individualized bond determination raises serious constitutional concerns); *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (due process requires "adequate procedural protections" against arbitrary civil detention); *Rodriguez v. Robbins*, 804 F.3d 1060, 1074 (9th Cir. 2015), rev'd on other grounds sub nom. *Jennings v. Rodriguez*, 583 U.S. 281 (2018) (holding that a bond hearing "must be more than a meaningless exercise").

is ineligible for bond as a foregone matter, without considering the law, the evidence of his equities, or entertaining counsel's arguments. This denial of a meaningful opportunity to be heard violates the INA and Due Process. As in the criminal context, habeas corpus is the proper and necessary remedy to vindicate these fundamental rights. *See Moore v. Dempsey*, 261 U.S. 86 (1923); *Johnson v. Zerbst*, 304 U.S. 458 (1938); *Burns v. Wilson*, 346 U.S. 137, 154 (1953). Moreover, exhaustion of administrative remedies will be futile.

38. Respondents' actions in detaining Petitioner without any legal justification violate the Fifth Amendment.

39. The government's detention of Petitioner is unjustified. Respondents have not demonstrated that Petitioner needs to be detained. *See Zadvydas*, 533 U.S. at 690 (finding immigration detention must further the twin goals of (1) ensuring the noncitizen's appearance during removal proceedings and (2) preventing danger to the community). There is no credible argument that Petitioner cannot be safely released back to his community and family.

40. For these reasons, Petitioner's detention violates the Due Process Clause of the Fifth Amendment.

SECOND CAUSE OF ACTION
Violation of Immigration and Nationality Act

50. Petitioner re-alleges and incorporates by reference the paragraphs above.

51. Petitioner was detained pursuant to "authority contained in section 236" of the INA; section 236 is codified at 8 U.S.C. § 1226. Despite this, DHS finds that he is detained subject to 8 U.S.C. § 1225(b)(2) and the IJ lacks jurisdiction under *Matter of Yajure Hurtado* on the same basis.

52. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. Mandatory detention does not apply to those who previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a) and are eligible for release on bond, unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

53. Respondents have wrongfully adopted a policy and practice of arguing all noncitizens, such as Petitioner, are subject to mandatory detention under § 1225(b)(2).

54. The unlawful application of § 1225(b)(2) to Petitioner violates the INA.

THIRD CAUSE OF ACTION
Fifth Amendment – Due Process
Denial of Opportunity to Contest Mis-Inclusion in Mandatory Category of Detention

55. Petitioner re-alleges and incorporates by reference the paragraphs above.

56. Mr. Solano Garcia has a vested liberty interest in preventing his removal because he is eligible for Cancellation of Removal relief, and is entitled to pursue that relief outside of detention by showing he is neither a danger to the community nor a flight risk. He is separated now from his wife and three U.S. citizen children, notwithstanding the dictates of 8 U.S.C. §1226(a) that he may seek redetermination of his custody status with an IJ under § 236(a), and prove he is not a flight risk or danger.

57. For all of the above reasons, Respondents' attempts to detain Petitioner without a meaningful opportunity to be heard violate his Procedural Due Process rights under the Fifth Amendment.

FOURTH CAUSE OF ACTION
ADMINISTRATIVE PROCEDURE ACT

59. Petitioner re-alleges and incorporates by reference the paragraphs above.

60. Respondents' continued efforts to deny him bond violate the INA, Administrative Procedures Act (APA), and the U.S. Constitution.

61. As set forth in Count Two and Three, federal regulations and case law provide the procedure for a respondent in removal proceedings like him to seek a bond redetermination by an IJ and be given a meaningful opportunity to present his claim.

62. In being denied the opportunity to return to his family, and continue to pursue Cancellation of Removal in a non-detained court setting where he is free to gather the additional necessary hardship and good moral character evidence, Mr. Solano Garcia would be deprived of the right to freedom to lawfully pursue his rights in this civil matter. The Government's "no-review" provisions are a violation of his procedural and substantive due process and without any statutory authority. There is no time-frame or procedure for requesting DHS to itself review its custody decision, and removal proceedings in this case will proceed during that time while Petitioner remains in custody.

63. The actions by Respondents would improperly alter the substantive rules concerning mandatory custody status without the required notice-and-comment period and would be in violation of the INA and its regulations. These actions by Respondents violate the APA. Under the APA, this Court may hold unlawful and set aside an agency action which is "contrary to constitutional right, power, privilege or immunity." 5 U.S.C. § 706(2)(B). The regulations at 8 C.F.R. §§ 1003.19(h)(1)(B) and 1003.19(h)(2)(B) providing no review of DHS custody decision for arriving aliens in removal proceedings are in violation of substantive and procedural due process as guaranteed by the Fifth Amendment to the United States Constitution. It is ultra vires because it exceeds the authority granted ICE by Congress at 8 U.S.C. § 1226(a). For these reasons, this Honorable Court should hold that

Petitioner is detained under § 236(a), not § 235(b), and order his immediate release or, in the alternative, direct the Immigration Court to conduct a custody redetermination hearing under § 236(a) in which Petitioner has a meaningful opportunity to show that he is not a danger or flight risk. Any contrary reliance on *Matter of Yajure-Hurtado* would unlawfully misapply the statute and deprive Petitioner of his rights under the INA, the APA, and the Due Process Clause.

FIFTH CAUSE OF ACTION
STAY OF REMOVAL CLAIM

64. Petitioner re-alleges and incorporates by reference the paragraphs above.

65. The denial of a bond hearing, followed by removal of Mr. Solano Garcia from the United States would cause his irreversible harm and injury because he is mis-classified by the Government as subject to mandatory detention.

66. The Court should grant the stay of Mr. Solano Garcia removal to protect his statutory rights under the INA and the APA. In attempting to assert his rights, the Government has railroaded him and deprived him of freedom and liberty to contest his removal while free on bond, or at the very least, of his ability to prove he is not subject to mandatory detention and that he merits release on bond.

SIXTH CAUSE OF ACTION
SUSPENSION CLAUSE CLAIM

67. Petitioner re-alleges and incorporates by reference the paragraphs above.

68. If 8 U.S.C. § 1252 stripped the Court jurisdiction from this matter, it would be unconstitutional as applied because it would deny Mr. Solano Garcia the opportunity for meaningful review of the unlawfulness of his detention and removal.

69. To invoke the Suspension Clause, a petitioner must satisfy a three-factor test: "(1) the citizenship and status of the detainee and the adequacy of the process through which that status determination was made; (2) the nature of the sites where apprehension and then detention took place; and (3) the practical obstacles inherent in resolving the prisoner's entitlement to the writ." *Boumediene v. Bush*, 553 U.S. 723, 766 (2008). Mr. Solano Garcia satisfies these three requirements and may invoke the Suspension Clause.

70. First, although Mr. Solano Garcia is not a U.S. citizen or resident, he has lived here for over 20 years, and he qualifies under the INA to seek Cancellation of Removal, because he has no disqualifying criminal history, because he has lived here longer than ten continuous years, because he can show ten years' good moral character, and because he can show his U.S. citizen children will suffer exceptional and extremely unusual hardship if he were removed to Mexico. Mr. Solano Garcia has significant family connections in the United States, including his three U.S. citizen children, who are all minors. All of which establishes a substantial legal relationship with the United States.

71. Mr. Solano Garcia satisfies the second factor because he was apprehended by DHS and remains detained in the United States.

72. Finally, there are no serious, practical obstacles to resolving this present matter. This Court is equipped to deciding whether Mr. Solano Garcia is entitled to the writ.

73. There is no adequate alternative to a habeas petition. The refusal of the immigration court to grant Mr. Solano Garcia the right to show he is mis-classified and that he is not subject to mandatory detention, such that he may return to his family and pursue cancellation, without proper notice or due process, deprives him of his constitutional rights. The BIA cannot adequately and expeditiously review these issues.

IX. RELIEF SOUGHT

WHEREFORE, Petitioner respectfully requests that this Court:

(1) Assume jurisdiction over this matter;

(2) Declare that ICE's November 5, 2025, apprehension and detention of Mr. Solano Garcia was an unlawful exercise of authority because the ICE officer provided no reason that he presents a danger to the community or is flight risk;

(3) Issue an order directing Respondents to show cause why the writ should not be granted;

(4) Order Respondents to file with the Court a complete copy of the administrative file from the Department of Justice and the Department of Homeland Security;

(5) Retain jurisdiction over this Petition notwithstanding any change in Petitioner's place of detention or immediate custodian and, pending final resolution of this case, direct Respondents to refrain from transferring Petitioner outside the Western District of Texas without prior leave of Court and to ensure that the Court can effectuate any relief ultimately granted, including by returning Petitioner to this District if necessary;

(6) Grant the writ and order Petitioner's immediate release on recognizance, parole, or reasonable supervision; or, in the alternative, order a prompt custody redetermination under § 1226(a) before an Immigration Judge within three days, with the Government bearing a clear-and-convincing burden of flight risk or danger on the record and with findings consistent with *Matter of Guerra* and *Matter of Siniauskas*; and, if Respondents continue to assert mandatory detention, order a Joseph-type hearing to test the legal and factual predicates, with release if such hearing is not held by the deadline;

(7) Award costs and, if permissible, attorneys' fees under the Equal Access to Justice Act, 28 U.S.C. § 2412, preserving Petitioner's position that EAJA may apply in habeas

notwithstanding *Barco v. Witte*, 65 F.4th 782 (5th Cir. 2023), and noting contrary authority, including *Vacchio v. Ashcroft*, 404 F.3d 663, 670–72 (2d Cir. 2005); *In re Petition of Hill*, 775 F.2d 1037, 1040–41 (9th Cir. 1985); *Daley v. Ceja*, No. 24-1191, — F.4th —, 2025 WL 3058588 (10th Cir. Nov. 3, 2025) (holding that habeas actions challenging immigration detention are unambiguously "civil actions" within EAJA's "any civil action" language and affirming an EAJA award where the habeas petition materially altered the parties' legal relationship by securing a bond hearing and release); *Abioye v. Oddo*, 2024 U.S. Dist. LEXIS 174205 (W.D. Pa. 2024); and *Arias v. Choate*, 2023 U.S. Dist. LEXIS 119907 (D. Colo. 2023);

(8) Grant such other and further relief as the Court deems just and proper.

PRAYER FOR EXPEDITED CONSIDERATION

Pursuant to 28 U.S.C. § 2243, Petitioner respectfully requests expedited consideration. Each day of unlawful detention inflicts irreparable harm on Petitioner and his U.S. citizen children, depriving them of their father's care, stability, and support. Prompt judicial intervention is necessary to protect Petitioner's constitutional rights and his family's well-being.

Respectfully submitted,

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

I represent Petitioner, Ruben Melendez Hernandez, 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 21st day of November 2025.

/s/ Stephen O'Connor
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