UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS

OSCAR ALFREDO PENA EUSEBIO, Petitioner, v. MARY DE ANDA-YBARRA, Field Office Director, El Paso Field Office, Immigration and Customs Enforcement, in her official capacity; KRISTI NOEM, Secretary, U.S. Department of Homeland Security, in her official capacity; PAMELA BONDI, U.S. Attorney General, in her official capacity; TODD M. LYONS, Acting Director of U.S. Immigration and Customs Enforcement, in his official capacity; WARDEN OF CAMP EAST MONTANA DETENTION FACILITY, in his official capacity, Respondents.	Case No. 3:25-cv-578 **PETITION FOR A WRIT OF HABEAS CORPUS**

INTRODUCTION

1. Petitioner, OSCAR ALFREDO PENA EUSEBIO (A-Number: A[redacted]), is in the physical custody of Respondents at the Camp East Montana Detention Facility in El Paso, Texas. He now faces unlawful detention because the Department of Homeland Security (DHS) and the Executive Office for Immigration Review (EOIR) of the Department of Justice (DOJ) have erroneously concluded Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2).

2. Petitioner has lived in the United States for more than 20 years. He is married with two children, both of whom are American citizens, and has no criminal history.

3. On September 17, 2025, Petitioner was arrested by DHS in Indiana. On that same day, a Warrant for Arrest of Alien was issued with respect to Petitioner.

4. Petitioner was subsequently placed in removal proceedings by the filing of a Notice to Appear. Petitioner is charged with, *inter alia*, having entered the United States without inspection. *See* 8 U.S.C. § 1182(a)(6)(A)(i). He is represented by counsel in his removal proceedings. Petitioner is eligible and will apply for cancellation of removal pursuant to 8 U.S.C. § 1229b(b)(1).

5. On July 8, 2025, DHS issued a new policy instructing all Immigration and Customs Enforcement (ICE) employees to consider anyone who is inadmissible under § 1182(a)(6)(A)(i)—i.e., those who entered the United States without inspection—to be an "applicant for admission" for the purposes of § 1225(b)(2)(A) and therefore subject to mandatory detention. Consistent with this policy, DHS has denied Petitioner release from immigration custody.

6. Petitioner's detention on this basis violates the plain language of the Immigration and Nationality Act (INA). Section 1225(b)(2) does not apply to individuals like Petitioner, who entered the United States more than 20 years ago and who was apprehended hundreds of miles from any border or port of entry. Instead, such individuals are subject to discretionary detention under § 1226(a), which allows for release on conditional parole or bond. That statute expressly applies to people who, like Petitioner, are charged as inadmissible for having entered the United States without inspection.

7. Respondents' new legal interpretation is plainly contrary to the statutory text, statutory framework, Congressional intent, decades of agency practice, and decisions of federal courts across the nation, which apply § 1226(a) to people like Petitioner. Further, Respondents' detention of Petitioner without a bond redetermination hearing to determine whether he is a flight risk or a danger to others violates his right to due process.

8. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be released or, in the alternative, that he be provided a prompt bond hearing under § 1226(a).

JURISDICTION

9. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Camp East Montana Detention Facility in El Paso, Texas.

10. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, clause 2 of the United States Constitution (the Suspension Clause).

11. 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.

VENUE

12. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493–500 (1973), venue is proper in the United States District Court for the Western District of Texas, the judicial district in which Petitioner currently is detained.

13. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the Western District of Texas.

REQUIREMENTS OF 28 U.S.C. § 2243

14. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

15. 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) (emphasis added). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

PARTIES

16. As alleged by the government, Petitioner Oscar Alfredo Pena Eusebio is a citizen of Mexico who has resided in the United States since 2004. He has been in immigration detention since September 17, 2025.

17. Respondent Mary de Anda-Ybarra is the ICE Field Office Director for West Texas and New Mexico. As such, Mary de Anda-Ybarra is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. She is named in her official capacity.

18. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Ms. Noem has ultimate custodial authority over Petitioner and is named in her official capacity.

19. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. She is named in her official capacity.

20. Respondent Todd Lyons is the Acting Director of ICE. As the head of ICE, he is responsible for decisions related to the detention and removal of certain noncitizens, including Petitioner. As such, he is also a legal custodian of Petitioner. He is named in his official capacity.

21. Respondent, Warden of the Camp East Detention Facility, is the warden of the facility where Petitioner is currently detained. He is an immediate custodian of Petitioner. He is named in his official capacity.

FACTUAL BACKGROUND

22. As alleged by the government, Petitioner is a 37-year-old national of Mexico. He entered the United States without inspection in 2004, when he was 15 years old. In 2009, he visited family in Mexico and re-entered the United States a few months later. He has lived in the United States ever since and lived in Chicago, Illinois, prior to his detention.

23. Petitioner has been legally married to his wife Paola, who is a DACA recipient, since 2016. Together, they have two young daughters, ages 6 and 8, both of whom are United States citizens. Petitioner's mother-in-law also lives with Petitioner and his family. He does not have any criminal history.

24. Petitioner rents a home in Chicago, works to support his family, and is active in his community. For approximately nine years, he has worked for a moving services company in Chicago. When Petitioner is not working, he DJs at free community events. Petitioner and his wife are very involved in their daughters' Catholic school community. For example, Petitioner DJs for school events, such as the annual carnival, while his wife helps with decorations.

25. On September 17, 2025, Petitioner was arrested by DHS officers in Indiana. At that time, Petitioner was accompanying his brother, who was driving a moving truck from Chicago to Michigan. They were pulled over by a local police officer. After about 15 minutes of questioning by local police, immigration officials arrived at the scene and took Petitioner and his brother into custody.

26. On that same day, September 17, 2025, a Warrant for Arrest of Alien was issued with respect to Petitioner. Ex. A.

27. After arresting him, DHS placed Petitioner in removal proceedings before the El Paso SPC Immigration Court pursuant to 8 U.S.C. § 1229a by filing a Notice to Appear. Ex. B. ICE charged Petitioner with, *inter alia*, being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as someone who entered the United States without inspection. *Id.* Petitioner is represented by counsel in his removal proceedings and is eligible and will apply for cancellation of removal pursuant to 8 U.S.C. § 1229b(b)(1).

28. Pursuant to Respondents' new policy, discussed *infra*, Petitioner remains in mandatory detention. Absent relief from this Court, he faces the prospect of months, or even years, in immigration custody, separated from his family and community without ever receiving an individualized hearing justifying his detention, in violation of both the INA and his Fifth Amendment right to Due Process.

EXHAUSTION OF REMEDIES

29. No statutory requirement of administrative exhaustion applies to Petitioner's case. "Under the INA, exhaustion of administrative remedies is only required by Congress for appeals on final orders of removal." *Hernandez-Fernandez v. Lyons*, No. 5:25-cv-00773-JKP, 2025 WL 2976923, at *6 (W.D. Tex. Oct. 21, 2025) (citation omitted). Moreover, the judicially created "general rule that parties exhaust prescribed administrative remedies before seeking relief from the federal courts" does not apply to Petitioner's present challenge, as there are no prescribed administrative remedies to which he could resort. *McCarthy v. Madigan*, 503 U.S. 140, 144–45 (1992), *superseded by statute on other grounds as recognized in Woodford v. Ngo*, 548 U.S. 81 (2006).

30. In particular, DHS has taken the position that a noncitizen like Petitioner, who entered without inspection, is subject to mandatory detention under 8 U.S.C. § 1225, and the Executive Office for Immigration Review has affirmed that view. In a published decision, the Board of Immigration Appeals recently held that "Immigration Judges lack authority to hear bond requests or to grant bond to [noncitizens] who are present in the United States without admission." *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Under the BIA's interpretation, Petitioner is ineligible for bond as a noncitizen who entered the United States without inspection. Accordingly, there are no administrative remedies that he could exhaust

before seeking habeas relief. *See Singh v. Lewis*, No. 4:25-CV-96, 2025 WL 2699219, at *3 (W.D. Ky. Sep. 22, 2025) ("[t]he United States has made clear their position on § 1225, and it is being applied at all levels within the DHS. Therefore, it is unlikely that any administrative review would lead to the United States changing its position and precluding judicial review"); *Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, 2025 WL 2496379, at *4 (E.D. Mich. Aug. 29, 2025) ("Because exhaustion would be futile and unable to provide Lopez-Campos with the relief he requests in a timely manner, the Court waives administrative exhaustion and will address the merits of the habeas petition.").

31. Further, neither an immigration judge nor the Board of Immigration Appeals can rule on a petitioner's constitutional claims. *See Matter of R-A-V-P-,* 27 I. & N. Dec. 803, 804 n.2 (B.I.A. 2020) (holding that immigration judges and the BIA lack any authority to consider the constitutionality of the statutes or regulations governing immigration detention that they administer and are bound to follow); s*ee also Gonzalez v. O'Connell*, 355 F.3d 1010, 1017 (7th Cir. 2004) (noting that "the BIA has no jurisdiction to adjudicate constitutional issues").

LEGAL FRAMEWORK

I. Detention Authority and Respondents' Efforts to Expand Mandatory Detention

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

33. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens "already in the country." *See Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018). Section 1226(a) "sets out the default rule: The Attorney General may issue a warrant for the arrest and detention of a[] [noncitizen] 'pending a decision on whether the [noncitizen] is to be removed from the United States.'" *Id.* at 288 (quoting § 1226(a)). "Federal regulations provide that [noncitizens] detained

under § 1226(a) receive bond hearings at the outset of detention." *Id.* at 306 (citing 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1)). Pursuant to 1226(a) and its implementing regulations, following an initial custody determination by ICE, noncitizens may seek redetermination by an immigration judge ("IJ") "of the conditions under which he or she may be released." 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1). As a result, noncitizens "detained under § 1226(a) are entitled to a bond hearing before an IJ at any time before entry of a final removal order." *Covarrubias v. Vergara*, No. 5:25-cv-112, 2025 WL 2950097, at *2 (S.D. Tex. Oct. 8, 2025) (quoting *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239, 1247 (W.D. Wash. 2025)).

34. Section 1226(c) "carves out a statutory category" of noncitizens from § 1226(a) for whom detention is mandatory, comprised of individuals who have committed certain "enumerated … criminal offenses [or] terrorist activities." *Jennings*, 583 U.S. at 289 (citing § 1226(c)(1)). Among the individuals carved out and subject to mandatory detention are certain categories of "inadmissible" noncitizens. Subsections 1226(c)(1)(A), (D), (E). The statute's reference to such inadmissible noncitizens makes clear that, by default, people who are applicants for admission but encountered in the interior are afforded a bond hearing under subsection 1226(a). Courts have recently confirmed this understanding of § 1226. *See Rodriguez Vazquez*, 779 F. Supp. 3d at 1257 ("When Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies." (quoting *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010))); *Jimenez v. FCI_Berlin, Warden*, No. 25-cv-326, 2025 WL 2639390, at *8 (D.N.H. Sep. 8, 2025) ("That Congress specifically carved out categories of inadmissible noncitizens from § 1226(a)'s discretionary detention framework logically implies that Congress intended inadmissible noncitizens outside of those categories such as Jimenez to come within that framework.").

35. Second, the INA provides for mandatory detention of certain categories of noncitizens "seeking entry into the United States" under 8 U.S.C. § 1225(b). *Jennings*, 583 U.S. at 297; *see* § 1225(b) ("Inspection of applicants for admission").

36. In *Jennings*, the Supreme Court explained that this mandatory scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] *seeking to enter* the country is inadmissible." 583 U.S. at 287 (emphasis added). Noncitizens subject to mandatory detention under § 1225 may not be released except "for urgent humanitarian reasons or significant public benefit" under the parole authority provided by 8 U.S.C. § 1182(d)(5)(A). *See id.* at 300.

37. § 1225 is split into two categories. Section 1225(b)(1) provides for mandatory detention of noncitizens charged with enumerated grounds of inadmissibility *and* placed in expedited removal proceedings. 8 U.S.C. § 1225(b)(1)(A)(i). Meanwhile, § 1225(b)(2) applies only to recently arrived noncitizens seeking entry at a border or port of entry. *See infra* ¶¶ 43–56.

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

39. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).

40. Respondents have recently expanded their use of mandatory detention in ways that violate the plain language of § 1225(b)(2). On July 8, 2025, ICE, "in coordination with" DOJ, announced a new policy that rejected well-established understanding of the statutory framework and reversed decades of practice. *See* U.S. Immigration and Customs Enforcement, Interim Guidance Regarding Detention Authority for Applicants for Admission (July 8, 2025), https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission.

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

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

II. Respondents' Interpretation of § 1225(b)(2) Is Incorrect

43. Respondents' position that all undocumented noncitizens who entered without inspection are considered applicants for admission and subject to mandatory detention under § 1225(b)(2)(A) is incorrect. Instead, the statutory text, the statutory framework, Congressional intent, the longstanding practice of the agency, and the decisions of many federal courts across the nation—including district courts within the Fifth Circuit, *see, e.g.*, *Covarrubias v. Vergara*, No. 5:25-CV-112, 2025 WL 2950097, at *3 (S.D. Tex. Oct. 8, 2025)—limit § 1225(b)(2)'s scope to recently arrived noncitizens seeking admission at a border or port of entry.

a. Statutory Text

44. The text of § 1225, along with its placement in the overall detention scheme of the INA, make clear that the terms "applicant for admission" and "seeking admission" in § 1225(b)(2) do not encompass individuals who have entered without inspection and are apprehended when already inside the United States.

45. Section 1225 is titled: "Inspection by immigration officers; expedited removal of inadmissible *arriving* aliens; referral for hearing." (emphasis added.) As courts have recognized, "[t]he added word of 'arriving' indicates that the statute governs 'arriving' noncitizens, not those present already." *Beltran Barrera v. Tindall*, No. 3:25-CV-541-RGJ, 2025 WL 2690565, at *4 (W.D. Ky. Sep. 19, 2025) (citing *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425, at *5 (E.D. Mich. Sep. 9, 2025)). This limitation is particularly clear when compared to § 1226's general title: "Apprehension and detention of aliens."

46. Further, § 1225(b)(2)'s specific subheading, "Inspection of Other Aliens," subsection 1225(b)(2)(B)'s mention of "crewm[e]n" and "stowaway[s]," and subsection 1225(b)(2)(C)'s use of the active language "arriving," reinforce the limited scope of § 1225(b)(2)'s applicability to those who have recently arrived at a border or port of entry.

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

b. Statutory Framework

48. The statutory framework further supports that § 1225(b)(2) does not apply to noncitizens, like Petitioner, who have lived in the United States for years and who were apprehended while residing within the United States.

49. The INA's entire framework is premised on § 1225 governing detention of "arriving [noncitizens]" and § 1226 "appl[ying] to [noncitizens] already present in the United States." *Jennings*, 583 U.S. at 288, 301; *see also Lopez Benitez v. Francis*, No. 25-cv-5937, 2025

WL 2371588, at *8 (S.D.N.Y. Aug. 13, 2025) ("[T]he line historically drawn between sections 1225 and 1226, which makes sense of their text and the overall statutory scheme, is that § 1225 governs detention of non-citizens 'seeking admission into the country,' whereas § 1226 governs detention of non-citizens 'already in the country.'" (cleaned up) (quoting *Jennings*, 583 U.S. at 288-89)); *Martinez v. Hyde*, 2025 WL 2084238, at *8 (D. Mass. July 24, 2025) ("The idea that a different detention scheme would apply to non-citizens 'already in the country,' as compared to those 'seeking admission into the country,' is consonant with the core logic of our immigration system " (cleaned up) (quoting *Jennings*, 583 U.S. at 289)).

50. A fundamental principle of statutory construction is that courts must interpret statutes to give meaning to all provisions and avoid reading out or rendering superfluous any single provision. *Corley v. United States*, 556 U.S. 303, 314 (2009) (stating that "one of the most basic interpretive canons" is that 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" (cleaned up)). The government's current reading of § 1225(b)(2) violates this principle.

51. Section 1226(c) includes carveouts for certain categories of inadmissible noncitizens, who would otherwise fall under § 1226(a), that are instead subject to mandatory detention. *See* 8 U.S.C. § 1226(c)(1)(A), (D), (E). The inclusion of these carveouts in § 1226(c) indicates that, contrary to Respondents' interpretation, there are noncitizens who have not been admitted and that are not governed by § 1225's mandatory detention scheme. Indeed, if the government's interpretation were correct, it would render these portions of § 1226(c) superfluous since those same individuals would already be subject to mandatory detention under § 1225(b)(2).

52. The recent amendment to § 1226(c) confirms this statutory framework. Just this year, Congress passed the Laken Riley Act, which created new § 1226(a) categories of people who are now subject to mandatory detention under § 1226(c). Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025); 8 U.S.C. § 1226(c)(1)(E). Specifically, the Laken Riley Act mandates the detention of noncitizens who are inadmissible under §§ 1182(a)(6)(A) (noncitizens "present in the United States without being admitted or paroled"), 1182(a)(6)(C) (misrepresentation), or 1182(a)(7) (lacking valid documentation) and who have been arrested for, charged with, or convicted of certain crimes. *Id.* Again, if § 1225(b)(2) were already meant to subject these groups of inadmissible noncitizens to mandatory detention, it would render this portion of the Laken Riley Act redundant. *See Covarrubias*, 2025 WL 2950097, at *4; *Beltran Barrera*, 2025 WL 2690565, at *4; *Lopez-Campos*, 2025 WL 2496379, at *8.

c. Congressional Intent and Long-Standing Agency Practice

53. Congressional intent and long-standing historical practice underscore Petitioner's reading of the statute.

54. The current detention system has been in place since the passage 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.

55. Following the enactment of the IIRIRA, the Executive Office for Immigration Review 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) and eligible for bond and bond redetermination. *See* 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

56. In the decades that followed, most people who entered without inspection and were apprehended inside the United States were detained under § 1226(a) and received bond hearings, unless their criminal history rendered them ineligible. That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an immigration judge 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)).

d. Recent Federal Court Decisions Confirming Petitioner's Position

57. Numerous federal courts have reached conclusions consistent with Petitioner's position. For example, in *Covarrubias v. Vergara*, the court found that "§ 1226, not § 1225, applie[d]" to the detention of a noncitizen who had been living in the United States for almost 24 years. No. 5:25-CV-112, 2025 WL 2950097, at *1, *3 (S.D. Tex. Oct. 8, 2025). In the court's view, "the statutory text, the statute's history, Congressional intent, and § 1226(a)'s application for the past three decades support application of § 1226." *Id.* at *3 (citation modified). Other district courts within the Fifth Circuit have found likewise. *See Lopez Santos v. Noem*, No. 3:25-CV-01193, 2025 WL 2642278, at *5 (W.D. La. Sep. 11, 2025) (holding that § 1226 governed detention of noncitizen who had been in the United States for 20 years); *Kostak v. Trump*, No. 3:25-cv-1093, 2025 WL 2472136, at *3 (W.D. La. Aug. 27, 2025) (holding that § 1226 governed detention of noncitizen who "was already present in the United States").

58. Similarly, district courts outside of the Fifth Circuit have reached the same conclusion, rejecting Respondents' erroneous interpretation of the INA both before and after ICE implemented its July 8, 2025 interim guidance. *See, e.g.*, *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239; *Martinez*, 2025 WL 2084238; *Lopez Benitez*, 2025 WL 2371588; *Gomes v.*

Hyde, No. 1:25-CV-11571, 2025 WL 1869299, at *8 (D. Mass. July 7, 2025); *Garcia Jimenez v. Kramer*, No. 4:25-cv-03162, 2025 WL 2374223 (D. Neb. Aug. 14, 2025); *Aguilar Maldonado v. Olson*, No. 25-CV-3142, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v Noem*, 5:25-cv-01789, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Jacinto v. Trump, et al.*, 4:25-cv-03161, 2025 WL 2402271 (D. Neb. Aug. 19, 2025); *Leal-Hernandez v. Noem*, 1:25-cv-02428, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Lopez-Campos*, 2025 WL 2496379; *Herrera Torralba v. Knight*, 2:25-cv-03166, 2025 WL 2581792 (D. Nev. Sep. 5, 2025).

59. The BIA's decision in *Yajure Hurtado* has not slowed the steady flow of decisions rejecting Respondents' position. *See, e.g.*, *Singh v. Lewis*, 2025 WL 2699219, at *3 (disagreeing with BIA's analysis and according no deference under *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 413 (2024)); *Beltran Barrera*, 2025 WL 2690565, at *5 (same); *Pizarro Reyes v. Raycraft*, 2025 WL 2609425, at *6-8 (same); *Sampiao v. Hyde*, 2025 WL 2607924, at *8 n.11 (D. Mass. Sep. 9, 2025) (same); *Aceros v. Kaiser*, No. 25-CV-06924-EMC (EMC), 2025 WL 2637503, at *9 (N.D. Cal. Sep. 12, 2025) (same).

III. Petitioner's Detention Violates the INA

60. Petitioner's detention is not authorized under § 1225(b)(2).

61. As discussed above, mandatory detention under § 1225(b)(2) applies only to recently arrived noncitizens seeking admission at a border or port of entry, not individuals who entered without inspection and were later detained inside the country.

62. Here, "there is nothing in the record to suggest that [Petitioner] ever attempted to gain lawful entry." *Lopez-Campos*, 2025 WL 2496379, at *6. Petitioner entered without inspection, never encountered a DHS official, and lived in the United States for more than 20

years prior to being detained. As such, Petitioner is not subject to mandatory detention under § 1225(b)(2).

63. Nor is Petitioner's detention authorized under § 1226(a). As discussed above, § 1226(a)'s discretionary detention framework requires a bond hearing to make an individualized custody determination based on Petitioner's risk of flight or dangerousness. Here, Respondents have failed to provide such a hearing. Further, there is no information indicating that Petitioner is a flight risk or danger to the community.

64. Lacking any statutory basis for his detention, Respondents must release Petitioner or, in the alternative, promptly hold a bond hearing to determine whether he should remain in custody.

IV. Due Process Clause

65. In addition to violating § 1226(a), Respondents' continued detention of Petitioner, without a bond hearing, violates Petitioner's right to due process pursuant to the Fifth Amendment. Several courts—including the Western District of Texas—have found that mandatory detention without a bond hearing violates procedural due process as applied to those who, like Petitioner, were "not detained at the border on the threshold of initial entry, but rather after living in the United States for years." *Vieira v. De Anda-Ybarra*, 25-cv-00432, 2025 WL 2937880, at *4 (W.D. Tex. Oct. 16, 2025); *see also Lopez-Arevelo v. Ripa*, No. 25-cv-337, 2025 WL 2691828, at *7 (W.D. Tex. Sep. 22, 2025); *Santiago v. Noem*, No. 25-CV-361, 2025 WL 2792588, at *10 (W.D. Tex. Oct. 2, 2025); *Hernandez-Fernandez v. Lyons*, No. 25-cv-00773, 2025 WL 2976923, at *10 (W.D. Tex. Oct. 21, 2025).

66. It is well established that the Fifth Amendment entitles noncitizens to due process of law in the context of removal and deportation proceedings. *See Trump v. J. G. G.*, 604 U.S.

670, 673 (2025); *Reno v. Flores*, 507 U.S. 292, 306 (1993); *cf. Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) ("[T]he Due Process Clause applies to all "persons" within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent.").

67. To determine whether civil detention violates a noncitizen's Fifth Amendment due process rights, courts apply the three-part test in *Mathews v. Eldridge*, 424 U.S. 319 (1976). *See Hernandez-Lara v. Lyons*, 10 F.4th 19, 27–41 (1st Cir. 2021) (applying the *Mathews* test in the context of noncitizen detention pursuant to § 1226(a)); *Hernandez-Fernandez* 2025 WL at *9 (applying the *Mathews*-test in the context of noncitizen detention pursuant to § 1225).

68. Under *Mathews*, courts weigh the following three factors: 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." 424 U.S. at 335.

a. Private Interest

69. As to the first *Mathews* factor, "[t]he interest in being free from physical detention" is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529, 531 (2004).

70. Petitioner has been detained for nearly two months at the Camp East Montana Detention Facility in conditions that are indistinguishable from criminal incarceration. This detention prevents him from seeing his family, going to work to support himself and his family, and deprives him of any privacy and freedom of movement. He has lived, worked, gotten

married, raised a family, and established a community over the more than 20 years he has lived in the United States. *See Martinez v. Noem*, 25-cv-430-KC, 2025 WL 2965859 (W.D. Tex. Oct. 21, 2025) (collecting cases holding that "because the petitioners established a life here—albeit without authorization—they possessed a strong liberty interest in their freedom from detention.").

b. ***Risk of Erroneous Deprivation***

71. As to the second *Mathews* factor, courts must "assess 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." *Gunaydin v. Trump*, No. 25-CV-01151 (JMB/DLM), 2025 WL 1459154, at *8 (D. Minn. May 21, 2025). The current procedure of detaining Petitioner without any opportunity for a bond hearing creates a high likelihood of deprivation of Petitioner's liberty interest in remaining free from detention.

72. Where, as here, "there has been no individualized explanation of any kind of [Petitioner's] detention," the risk of erroneous deprivation is high. *See Santiago v. Noem*, 25-CV-361-KC, 2025 WL 2792588, at *12 (W.D. Tex. Oct. 2, 2025). This is particularly true because Petitioner has no criminal history and strong ties to his family and community in the United States, greatly reducing the possibility that he is dangerous and/or a flight risk. *See Singh v. Lewis*, 2025 WL 2699219, at *9 ("the risk of erroneously depriving him of his freedom is high if the IJ fails to assess his risk of flight or dangerousness.").

73. Additionally, there are reasonable alternatives available for Respondents to pursue. As discussed above, § 1226(a) applies to noncitizens facing charges of inadmissibility, including noncitizens like Petitioner who entered without inspection and were later detained while residing inside the country. As such, proper application of the INA's detention scheme

allows for the possibility of detaining Petitioner under § 1226(a) but requires a bond hearing to make an individualized determination of his risk of flight or dangerousness.

c. Government Interest

74. As to the third *Mathews* factor, the government's interest in maintaining the current procedure is minimal here. Any government interest in public safety or ensuring that Petitioner attends future immigration proceedings would be satisfied through the application of procedures such as those prescribed by § 1226(a) and its implementing regulations—i.e., a bond redetermination hearing where an immigration judge will consider Petitioner's individualized facts and circumstances to determine whether he is a danger to the community or a flight risk.

75. The government's employment of procedures such as those in the § 1226(a) context demonstrates that such procedures would not impose upon the government significant enough additional administrative or fiscal burdens to outweigh Petitioner's fundamental liberty interest in being free from physical detention. *See Vieira v. De Anda-Ybarra*, 25-cv-00432, 2025 WL 2937880 (W.D. Tex. Oct. 16, 2025) ("[A]ny fiscal or administrative burdens Respondents may assert by having to provide a bond hearing are also diminished given . . . the government has conducted such hearings for the past thirty years until a change in the agency's interpretation of the law."); *accord Singh v. Andrews*, No. 25-CV-00801, 2025 WL 1918679, at *8 (E.D. Cal. July 11, 2025) ("In immigration court, custody hearings are routine and impose a 'minimal' cost.")

CLAIMS FOR RELIEF

COUNT I
Violation of the INA

76. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

77. 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. As relevant here, it does not apply to those who previously entered the country and have been residing in the United States prior to being detained and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), 1226(c), or 1231. But Respondents' actions here violate § 1226(a) too because, to date, Respondents have refused to consider Petitioner for bond without ever demonstrating that he is a flight risk or danger to others.

78. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates the INA.

COUNT II
Violation of Due Process

79. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

80. 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 (2001).

81. Petitioner entered the country without inspection, had no contact with any DHS officials, and lived in the United States for more than 20 years before being detained.

82. All three *Mathews* factors support Petitioner's position. 424 U.S. 319. He has a fundamental interest in liberty and being free from official restraint; the risk of erroneous deprivation is high without an individualized bond hearing; and the governmental interest in

maintaining Petitioner's detention without a bond hearing is minimal, particularly in light of the alternative procedure available to the government pursuant to § 1226(a).

PRAYER FOR RELIEF

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

a. assume jurisdiction over this matter;

b. issue a writ of habeas corpus requiring that Respondents immediately release Petitioner or, in the alternative, provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) within 14 days;

c. enjoin Respondents from moving Petitioner outside the jurisdiction of this Court pending adjudication of this petition;

d. declare that Petitioner's continued detention violates the INA and the Due Process Clause of the Fifth Amendment;

e. award Petitioner attorneys' 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 proper.

DATED this 21st day of November, 2025

Respectfully submitted,

/s/ Ryan J. Meyer

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Attorney for Petitioner

VERIFICATION

I represent Petitioner, Oscar Alfredo Pena Eusebio, and submit this verification on his behalf. I hereby verify, under penalty of perjury, that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Executed this 21st day of November, 2025.

/s/ Ryan J. Meyer