IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ALEJANDRO NOE DIAZ HERNANDEZ Petitioner-Plaintiff, v. Sam Olson, IMMIGRATION CUSTOMS ENFORCEMENT AND REMOVAL OPERATIONS CHICAGO DEPUTY FIELD OFFICE DIRECTOR; Sandra Salazar, IMMIGRATION CUSTOMS ENFORCEMENT AND REMOVAL OPERATIONS CHICAGO FIELD OFFICE DIRECTOR; Marcos Charles, ACTING EXECUTIVE ASSOCIATE DIRECTOR, ENFORCEMENT AND REMOVAL OPERATIONS; Todd M. Lyons, ACTING DIRECTOR, IMMIGRATION CUSTOMS ENFORCEMENT, Madison Sheahan, DEPUTY DIRECTOR, IMMIGRATION CUSTOMS ENFORCEMENT; Kristi Noem, SECRETARY OF THE DEPARTMENT OF HOMELAND SECURITY; Pam Bondi, ATTORNEY GENERAL OF THE UNITED STATES; Donald J. Trump, PRESIDENT OF THE UNITED STATES Respondents	Case No. 1:25-cv-13424 Honorable Judge **PETITION FOR WRIT OF HABEAS CORPUS AND REQUEST FOR RELEASE FROM DETENTION** **Expedited Hearing Requested**

PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

NOW COMES the Petitioner, Mr. Alejandro Noe Diaz Hernandez (Petitioner Alejandro), by and through his attorney William Gaston McLean III, of the Law Office of William Gaston McLean III, P.C., and hereby submit their Petition for a Writ of Habeas Corpus under 28 U.S.C. § 2241 to this Court.

INTRODUCTION

1. Petitioner Alejandro was born on [redacted] in Mexico, and is a citizen of Mexico.

2. Petitioner does not have lawful immigration status in the United States.

3. Petitioner entered the United States without inspection by crossing the United States/Mexico border on foot, Petitioner Alejandro entered on approximately May 1999.

4. Petitioner Alejandro lives at [redacted]

5. On November 1, 2025, the Respondents, through Immigration Customs Enforcement (ICE) officers or other Department of Homeland Security (DHS) agents, conducted a traffic stop on Petitioner after Petitioner was driving in Wheeling, IL. DHS officers in two vehicles followed him until he stopped the vehicle and forcefully pulled Petitioner out of the vehicle.

6. Petitioner was able to quickly make a phone call to his daughter, Jocelyn Diaz, to let her know he was being interrogated by ICE. On Saturday evening, Petitioner made a collect call to his family to notify them that he was at Broadview ICE Facility located at 1930 Beach St. Broadview, IL 60155.

7. Petitioner was notified by ICE officers that he would be taken to the detention facility in El Paso, TX and that he has been scheduled a court hearing in the immigration courts of El Paso, Texas.

8. Petitioner, on information and belief, remains at the Broadview ICE Facility while ICE process him for immigration violations and removal proceedings at the time of this filing.

9. Respondents, on information and belief, are charging Petitioner with having entered the United States without admission or inspection under 8 U.S.C. § 1182(a)(6)(A)(i).

10. DHS policy instructs all ICE employees to consider any noncitizen inadmissible under that statute – i.e., those who entered the United States without admission or inspection – to be ineligible

for an immigration bond under 8 U.S.C. § 1225(b)(2)(A). *See* ICE Memo: Interim Guidance Regarding Detention Authority for Applications for Admission, issued July 8, 2025.

11. A significant Board of Immigration Appeals (BIA) precedent decision, binding on every Immigration Judge (IJ) nationwide, holds that an IJ has no jurisdiction to consider immigration bond requests for any noncitizen who entered the United States without admission or inspection. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

12. Respondent new legal interpretation is plainly contrary to the statutory framework and contrary to decades of agency practice of instead applying 8 U.S.C. 1226(a), which allows for release on conditional parole or allows for an IJ to consider bond requests or make bond redeterminations.

13. Respondents detention of Petitioner under 8 U.S.C. § 1225(b)(2)(A) violates the plain language of the Immigration and Nationality Act because that statute does not apply to noncitizens like Petitioner who entered the United States without admission or inspection each more than 20 years ago, and who now reside permanently in the United States.

14. Furthermore, Respondents warrantless arrest of Petitioner violated the consent decree reached in *Castañon Nava et al. v. Dep't of Homeland Security et at.,* No. 18-cv-3757-RRP (Castañon Nava settlement) which limits ICE's authority to make warrantless arrests in Illinois, Indiana, Wisconsin Kansas, Kentucky, and Missouri on February 8, 2022.

15. Respondents warrantless arrest of Petitioner in direct violation of the Castañon Nava settlement is just one of purportedly hundreds that have occurred since the beginning days of the Respondent Donald J. Trump's second term as president of the United States, including at least twenty-five in connection with "Operation Midway Blitz," a major ongoing immigration enforcement campaign targeting the Chicago area.

16. Pursuant to ongoing litigation of the Castañon Nava settlement, Judge Jeffrey I.

Cummings issued an order conclusively extending it to February 2, 2026, "which corresponds to the number of days between the date that ICE unequivocally ceased its compliance with [it] (June 11, 2025)" and the date of that order, which was October 7, 2025.

17. Petitioner now seeks a writ of habeas corpus ordering ICE to release Petitioner from ICE custody, as their arrest violated the Castañon Nava settlement protecting Petitioner interest against warrantless immigration arrest, or, alternatively, a writ of habeas corpus requiring that Petitioner be released unless Respondents provide Petitioner an immigration bond hearing under 8 U.S.C. 1226(a) within seven days.

PARTIES

18. Petitioner Alejandro is a national and citizen of Mexico who entered the United States without inspection or admission, who lives at [redacted], and who DHS arrested for immigration violations and removal proceedings on November 1, 2025.

19. Respondents Sam Olson and Sandra Salazar, are the Immigration Customs Enforcement and Removal Operations Chicago Field Office Directors, and are custodial officials acting within the boundaries of the judicial district of the United States Court for the Northern District of Illinois, acting with authority designated to them by Respondents Marcos Charles, Acting Executive Associate Director, Enforcement and Removal Operations, Todd M. Lyons, Acting Director, Immigration Customs Enforcement, Madison Sheahan, Deputy Director, Immigration Customs Enforcement. Kristi Noem, Secretary of DHS, Pam Bondi, Attorney General of the United States, and Donald J. Trump, President of the United States.

JURISDICTION

20. Petitioner is in the physical custody of Respondents, who are detaining him at the Broadview ICE Facility at 19930 Beach St. Broadview, IL 60155.

21. This action arises under the Constitution of the United States and the Immigration and

Nationality Act (INA), 8 U.S.C. § 1101 et. seq., as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No 104-208, 110 Stat. 1570. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 and the Suspension Clause of the Constitution because this action is a habeas corpus petition, and under 28 U.S.C. § 1331 because this action arises under federal law, including the INA, 8 U.S.C. § 1101, *et seq.*, and Administrative Procedure Act, 5 U.S.C. § 551, *et seq.* In sum, this Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

22. 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.

23. Congress has stripped district courts of habeas jurisdiction in many immigration provisions, *e.g.*, 8 U.S.C. § 1252, but those provisions are inapplicable in this case. Even though Congress has the power to deprive district courts of habeas jurisdiction, that power is strictly construed. *See, e.g., Reno v. American-Arab Anti-Discrimination Comm.,* 525 U.S. 483-84 (1999) (finding it "implausible" that listing three discrete actions is Congress' way to refer to all claims arising from removal proceedings); see also *Jennings v. Rodriguez*, 138 S. Ct. 830, 840-841 (2018) (observing that, historically, when confronted with "capacious" phrases, the Court has rejected "uncritical literalism"). Because the great majority of jurisdiction-stripping provisions do not mention challenges to detention decisions, they do not deprive this Court of habeas jurisdiction over Petitioner's challenge to detention decisions, they do not deprive this Court of habeas jurisdiction over Petitioner's challenges to his detention. See, *e.g.*, 8 U.S.C. § 1252(a)(2)(A) (depriving district courts of habeas jurisdiction to review expedited order of removal); 8 U.S.C. § 1252(a)(2)(B) (depriving district courts of habeas jurisdiction over certain forms of deportation relief).

24. The only provision that conceivably applies to Petitioner's challenges is 8 U.S.C. §

1226(e), which purports to deprive district courts of jurisdiction over "discretionary" detention decisions. However, that provision does not apply to challenges brought within a petition for habeas corpus. As the Supreme Court has explained, because immigration law has historically used "judicial review" and "habeas corpus" to mean different things, a jurisdiction-stripping provision in the INA must explicitly reference "habeas corpus" or "28 U.S.C. § 2241" to deprive district courts of habeas jurisdiction at all. *INS v. St. Cyr*, 533 U.S. 289, 311-13 (2001).

25. The inapplicability of 8 U.S.C. § 1226(e) to habeas challenges is confirmed by the statutory history of the INA. Prior to the Supreme Court's decision in *INS v. St. Cyr*, the INA's jurisdiction-stripping provisions did not specifically mention "habeas corpus." *See, e.g.*, 8 U.S.C. § 1252(a)(2)(A) (no mention of habeas corpus). The Supreme Court then concluded that, because they did not specifically mention habeas corpus, all issues remained reviewable in habeas corpus proceedings. *See INS v. St. Cyr*, 533 U.S. 289 at 312-13. Congress then amended the INA to specifically include references to habeas corpus in several jurisdiction-stripping provisions. *Compare, e.g.*, 8 U.S.C. § 1252(a)(2)(A) (2000) (no mention of habeas corpus) with 8 U.S.C. § 1252(a)(2)(A) (2020) (mentioning habeas corpus). This was done in direct response to the Court's decision in *St. Cyr*. H.R. Rept. No. 109-72, 173-76 (2005) (explaining Supreme Court's ruling in *St. Cyr*, discussing its impact, and describing how changes to the INA are intended to mitigate and resolve perceived issues).

26. At that time, Congress did not amend 8 U.S.C. § 1226(e) to include reference to habeas corpus, and it still has not. *Compare, e.g.*, 8 U.S.C. § 1252(a)(2)(A) (2005) (mentioning habeas corpus) with 8 U.S.C. § 1226(e) (2005) (no mention of habeas corpus) *and* 8 U.S.C. § 1226(e) (2020) (still no mention of habeas corpus). This observation lends strong credence to the notion that Congress intended that § 1226(e) would leave habeas review intact. See also H.R. Rept. No. 109-72, 175 (2005) (amendments "would not preclude habeas review over challenges to detention that are independent of challenges to removal orders. Instead, the bill would eliminate

habeas review only over challenges to removal orders").

27. That conclusion is supported by canons of statutory construction. "When Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect." *St one v. INS*, 514 U.S. 386, 397 (1995) (citing *Reiter v. Sonotone Corp.*, 442 U.S. 330, 339 (1979) and *Moskal v. United States*, 498 U.S. 103, 109-11 (1990)). Reasoning by contrapositive, it follows that when Congress intends no change to occur, it will not amend a statute. So, by leaving § 1226(e) alone, it follows that Congress intended to leave intact district courts' habeas corpus jurisdiction over challenges to detention decisions by immigration enforcement agencies.

28. Furthermore, even if § 1226(e) *did* apply to petitions for habeas corpus in general, it would not apply to Petitioner's specific claims. Section 1226(e) only purports to deprive district courts of jurisdiction to review the agency's "discretionary judgment." Administrative agencies do not have discretion to violate the constitution, so decisions that do so, by definition, are not "discretionary judgments" *See* 8 U.S.C. 1226(e). It follows that, as a matter of statutory construction, 8 U.S.C. § 1226(e) cannot be said to apply to constitutional claims challenging detention.

29. Therefore, this Court holds the jurisdiction to review this habeas petition on behalf of Petitioner.

VENUE

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

31. 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 Northern District of Illinois.

32. Under 28 U.S.C. §1391(e)(1), the proper venue lies in the United States District Court for the Northern District of Illinois, the judicial district in which ICE originally arrested and is currently detaining Petitioner, where Petitioner lives, and where Respondents Sam Olson and Sandra Salazar, act as the Immigration Customs Enforcement and Removal Operations Chicago Field Office Directors.

REQUIREMENTS OF 28 U.S.C. § 2243

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

34. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. 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).

LEGAL FRAMEWORK

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

36. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal

proceedings before an IJ ("IJ"). See 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

37. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under § 1225(b)(2).

38. Last, 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. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996 which was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

41. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

42. Thus, in the decades that followed, most people who entered without inspection and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). 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 IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994);

see also H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

43. 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.

44. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission," claims that all persons who entered the United States without inspection shall now be subject to mandatory detention provision 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, and even decades.

45. On September 5, 2025, the BIA adopted this same position in a published decision, *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). There, the BIA held that all noncitizens who entered the United States without admission or parole are subject to detention under § 1225(b)(2)(A) and are ineligible for IJ bond hearings.

46. Since Respondents adopted their new policies, dozens of federal courts have rejected their new interpretation of the INA's detention authorities. Courts have likewise rejected *Matter of Yajure Hurtado*, which adopts the same reading of the statute as ICE.

47. Even before ICE or the BIA introduced these nationwide policies, IJs in the Tacoma, Washington, immigration court stopped providing bond hearings for persons who entered the United States without inspection and who have since resided here. There, the U.S. District Court in the Western District of Washington found that such a reading of the INA is likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025).

48. Subsequently, court after court has adopted the same reading of the INA's detention authorities and rejected ICE and EOIR's new interpretation. *See, e.g., Gomes v. Hyde*, No. 1:25-CV- 11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), report and recommendation adopted.

49. Courts have uniformly rejected DHS's and EOIR's new interpretation because it defies the INA. As the *Rodriguez Vazquez* court and others have explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

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

51. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a). As the *Rodriguez Vazquez* court explained, "[w]hen Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies." *Rodriguez Vazquez*, 779 F. Supp. 3d at 1257 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)); see also *Gomes*, 2025 WL 1869299, at *7.

52. Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole.

53. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who

recently entered the United States. That statute's entire framework is premised on inspections at the border of people who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention 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 admissible." *Jenning v. Rodriguez*, 583 U.S. 281, 287 (2018).

54. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like Petitioner, who has already entered and was residing in the United States at the time he was apprehended.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

55. Exhaustion is not required of this claim. *See Gonzalez v. O'Connell*, 355 F.3d 1010, 1016 (7th Cir. 2004). Exhaustion is not required in four (4) circumstances: (1) When delay would cause undue prejudice; (2) When the agency lacks the ability or competence to resolve the dispute; (3) When exhaustion would be futile because the agency has already decided the issue; and (4) When substantial constitutional questions are raised. *Id.* (citing *Iddir v. INS*, 301 F.3d 492, 498 (7th Cir. 2002)). This claim falls into three of the four exceptions to exhaustion.

56. First and foremost, delay would cause undue prejudice to Petitioner as, per *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), the BIA held that under the "plain language" of INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A), IJs categorically lack jurisdiction to conduct bond hearings for noncitizens deemed "present in the United States without admission," even in cases where the Department of Homeland Security (DHS) has elected to place such individuals into removal proceedings under INA § 240. *Id.* at 229. The BIA's decision recharacterizes § 235(b)(2)(A) as a sweeping "catch-all" detention mandate for virtually all applicants for admission

not subject to expedited removal under § 235(b)(1). *Id.* at 219-220. In doing so, the BIA selectively relies on *Jennings v. Rodriguez*, 583 U.S. 281, 299 (2018), to claim that detention under § 235(b)(2)(A) must continue "until removal proceedings have concluded." *Id.* at 225.

57. For the same reason explained above, this claim falls into two (2) other exceptions: the agency lacks the ability or competence to resolve the dispute and exhaustion would be futile because the agency has already decided the issue.

58. Since the IJ is not empowered to overrule BIA precedent, particularly with respect to case law that is so recent, it would be futile to require Petitioner to first seek custody redetermination before the IJ. It must be further stressed that the reasoning explained above represents a striking departure from decades of agency practice and jurisprudence. For years, DHS and the immigration courts have recognized the authority of IJs to conduct custody redetermination hearings in precisely these circumstances. The BIA's sudden and disingenuous reinterpretation of the statute disregards both its own precedent and the constitutional concerns raised by prolonged detention without individualized review. By invoking "plain language" now—after years of contrary interpretation—the agency effectively insulates detention decisions from meaningful administrative review.

59. Accordingly, the Petitioner has no further recourse within the immigration court system or the BIA. The exhaustion requirement is therefore satisfied. In light of the BIA's denial of IJ jurisdiction to hear custody redetermination requests, habeas corpus is the only mechanism available to challenge Respondent's ongoing detention and to vindicate constitutional rights at stake.

60. Nor does 8 U.S.C. § 1226(e) bar review of this claim. Supreme Court and Seventh Circuit precedent establish that § 1226(e) does not strip district courts of habeas jurisdiction over

challenges to the government's detention authority under the statute. *See Jennings*, 138 S. Ct. at 841 (citing *Demore v. Kim*, 538 U.S. 510, 516 (2003)); *see also Parra v. Perryman*, 172 F.3d 954, 957 (7th Cir. 1999). This claim fits comfortably within that description. Furthermore, even if those cases did not leave this court's habeas jurisdiction intact, the Constitution itself would. *See* U.S. Const., Art. I, § 9, cl.2; *see also Boumediene v. Bush*, 553 U.S. 723, 792-93 (2008) (attempts to strip habeas jurisdiction that do not leave an adequate alternative are inoperative).

61. Because the IJ currently lacks jurisdiction to evaluate Petitioner's custody determination, Petitioner asks this Court to do so, and order that he be released immediately.

CLAIMS FOR RELIEF

CLAIM ONE

RELIEF FOR VIOLATION OF THE INA

62. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

63. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all alleged noncitizens residing in the United States who are alleged to be subject to the grounds of inadmissibility. As relevant here, it does not apply to those who are alleged to have previously entered the country and have resided in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such alleged noncitizens are detained under § 1226(a), unless they are subject to §1225(b)(1), § 1226(c), or § 1231.

CLAIM TWO

VIOLATION OF BOND REGULATIONS

64. Petitioner incorporates by reference the allegations of fact set forth in preceding paragraphs.

65. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of "Apprehension, Custody, and Detention of [Noncitizens]," the agencies explained that "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) *will be eligible for bond and bond redetermination.*" 62 Fed. Reg. at 10323 (emphasis added). The agencies thus made clear that individuals who are alleged to have entered without inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.

66. Nonetheless, pursuant to *Matter of Yajure Hurtado*, EOIR has a policy and practice of applying § 1225(b)(2) to individuals like Petitioner.

67. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

CLAIM THREE

VIOLATION OF PROCEDURAL DUE PROCESS

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

69. 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).

70. Petitioner has a fundamental liberty interest of being free from official restraint.

71. The government's detention of Petitioner without a bond redetermination hearing

to determine whether he is a flight risk or danger to others violates his right to due process.

CLAIM FOUR

VIOLATION OF THE CASTAÑON NAVA SETTLEMENT

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

73. ICE arrested Petitioner, who has a protected liberty interest of being free of the fear of a warrantless arrest, without warrants, in clear violation of the Castañon Nava settlement.

74. There is no doubt that the Castañon Nava settlement is still in full effect, given that Judge Jeffrey I. Cummings from *this very* District Court for the Northern District of Illinois explicitly extended it until at least February 2, 2026.

75. Petitioner is a member of the class of people included in the Castañon Nava settlement, as he lives in Illinois and was arrested for immigration violations with no warrant.

76. Respondents apparently have no intention of following the terms of the Castañon Nava settlement, as they have conducted hundreds of warrantless immigration arrests during the original term of the settlement, and clearly continue to do so even after its explicit extension.

77. This flagrant disregard for the law by ICE, combined with a steady official retreat away from discretion and relentless march towards strict literalism, have combined to form a perfect storm of warrantless arrest and mandatory detention for millions of terrorized noncitizens in the United States. Petitioner prays that this same reflexiveness does not extend to Your Honor.

CLAIM FIVE

EQUAL ACCESS TO JUSTICE ACT UNDER 28 U.S.C. 2412

78. If Petitioner prevails, he requests attorney's fees and costs under the Equal Access to Justice Act, as amended. 28 U.S.C. § 2412.

PRAYER FOR RELIEF

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

A. Assume jurisdiction over this matter;

B. Issue an order declaring Respondents' warrantless arrest of Petitioner is unlawful;

C. Issue an order declaring Respondents' detention of Petitioner without access to an immigration bond hearing or immigration bond redetermination is unlawful;

D. Issue an order staying Respondents' removal from both the Northern District of Illinois and from the United States;

E. Issue a writ of habeas corpus ordering Petitioner be released from ICE custody;

F. Award Petitioner reasonable costs and attorney's fees; and,

G. Grant any other relief which this Court deems just and proper.

Respectfully Submitted,

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ATTORNEY FOR PETITIONER

Dated: November 3, 2025

28 U.S.C. § 2242 VERIFICATION STATEMENT

I am submitting this verification on behalf of the Petitioner because I am the Petitioner's attorney. I have reviewed relevant documentation of the events described in this Petition and Complaint reasonably available to me prior to and at the time of filing. On the basis of those documents and discussions with individuals whom Petitioner authorized to speak on his behalf, I hereby verify that the statements made in this Petition and Complaint are true and correct to the best of my knowledge.

Respectfully Submitted,

/s/ *William Gaston McLean III*
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ATTORNEY FOR PETITIONER

Dated: November 3, 2025

CIVIL LOCAL RULE 3.2 DISCLOSURE STATEMENT

Counsel Petitioner furnishes this disclosure in compliance with Civil L.R. 3.2 and Fed. R. Civ. P. 7.1.

Full name of every party counsel represents in this case: Petitioner is an individual, not a corporation.

William Gaston McLean III of the Law Office of William G McLean III P.C.

Respectfully Submitted,

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ATTORNEY FOR PETITIONER

Dated: November 3, 2025