

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

Gerson Isai Alfaro Cisneros

Petitioner,

Case No. 25-5700

v.

BRET BRADFORD, Field Office Director of Enforcement and Removal Operations, Houston Field Office, U.S. Immigration and Customs Enforcement; KRISTI NOEM, Secretary of the U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; PAMELA BONDI, U.S. Attorney General; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; MARTIN FRINK, Warden of Houston Contract Detention Facility,

Respondents.

**PETITION FOR WRIT OF
HABEAS CORPUS**

INTRODUCTION

1. Petitioner Gerson Isai Alfaro Cisneros is in physical custody of Respondents at the Houston Contract Detention Facility in Houston, Texas. *See* Exhibit 1, Printout from ICE Online Detainee Locator System showing Petitioner's current detention. He now faces unlawful detention because the Department of Homeland Security (DHS) and the Executive Office of Immigration Review (EOIR) have concluded Petitioner is subject to mandatory detention.

2. Petitioner is charged with, *inter alia*, having entered the United States without admission or inspection. *See* 8 U.S.C. § 1182(a)(6)(A)(i).

3. Based on this allegation in Petitioner's removal proceedings, DHS denied Petitioner release from immigration custody, consistent with a new DHS policy issued on July 8, 2025, instructing all Immigration and Customs Enforcement (ICE) employees to consider anyone inadmissible under § 1182(a)(6)(A)(i)—i.e., those who entered the United States without admission or inspection—to be subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.

4. Similarly, on September 5, 2025, the Board of Immigration Appeals (BIA or Board) issued a precedent decision, binding on all immigration judges, holding that an immigration judge has no authority to consider bond requests for any person who entered the United States without admission. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The Board determined that such individuals are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and, therefore, ineligible to be released on bond.

5. Petitioner's detention on this basis violates the plain language of the Immigration and Nationality Act. Section 1225(b)(2)(A) does not apply to individuals like Petitioner who previously entered and are now residing in the United States. Instead, such individuals are subject

to a different statute, § 1226(a), that 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.

6. Respondents' new legal interpretation is plainly contrary to the statutory framework and contrary to decades of agency practice applying § 1226(a) to people like Petitioner.

7. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be promptly released or, at minimum, a prompt custody redetermination to provide a bond hearing under § 1226(a) within seven days.

JURISDICTION

8. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Houston Contract Detention Facility in Houston, Texas. *Id.*

9. 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).

10. 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

11. 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 Southern District of Texas, the judicial district in which Petitioner currently is detained under Respondent's custody.

12. 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 Southern District of Texas.

REQUIREMENTS OF 28 U.S.C. § 2243

13. 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, Respondents must file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*

14. 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

15. Petitioner Gerson Isai Alfaro Cisneros is a citizen of El Salvador who has been in immigration detention since August 25, 2025. *See* Exhibit 2, Notice to Appear. After arresting Petitioner in Montgomery County, ICE did not set bond and Petitioner is unable to obtain review of his custody by an IJ, pursuant to the Board’s decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

16. Respondent Bret Bradford is the Director of the Houston Field Office of ICE’s Enforcement and Removal Operations division. As such, Bret Bradford is Petitioner’s immediate custodian and is responsible for Petitioner’s detention and removal. He is named in his official capacity.

17. 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 sued in her official capacity.

18. Respondent Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.

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 sued in her official capacity.

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

21. Respondent Martin Frink is the Warden of the Houston Contract Detention Facility in Houston, Texas, where Petitioner is detained. He has immediate physical custody of Petitioner and resides in the judicial district of the United States Court for the Southern District of Texas, Houston Division. He is sued in his official capacity.

LEGAL FRAMEWORK

22. "In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755 (1987).

23. This fundamental principle of our free society is enshrined in the Fifth Amendment's Due Process Clause, which specifically forbids the Government to "deprive[]" any "person . . . of . . . liberty . . . without due process of law." *U.S. Const. amend. V*.

24. “[T]he Due Process Clause applies to all ‘persons’ within the United States, including aliens, whether their presence is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) (“[A]liens who have once passed through our gates, even illegally, may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law”).

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

26. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an 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).

27. 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).

28. 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).

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

30. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104–208, Div. C, §§ 302–03, 110 Stat. 3009–546, 3009–582 to 3009–583, 3009–585. Section 1226(a)

was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

31. The Laken Riley Act confirms Congress preserved § 236(a)'s discretionary bond regime for most inadmissible entrants arrested in the interior by adding a narrow new mandatory detention category under § 236(c)(1)(E) (pairing inadmissibility under 8 U.S.C. § 1182(a)(6)(A), (6)(C), or (7) with specified crimes). If § 235(b) already mandated detention for all inadmissible entrants, § 236(c)(1)(E) would be redundant—an outcome courts must avoid. *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 agency practice applying § 236(a) to interior arrests, and courts presume amendments harmonize with that practice. *Monsalvo v. Bondi*, 604 U.S. ___, 145 S. Ct. 1232, 1242 (2025)

32. 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).

33. 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)).

34. 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.

35. The new policy, entitled “Interim Guidance Regarding Detention Authority for Applicants for Admission,”¹ 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.

36. On September 5, 2025, the BIA adopted the same position in a published decision, *Matter of Yajure Hurtado*. There, the Board 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.

37. 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.

38. Even before ICE or the BIA introduced these nationwide policies, IJs 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).

¹ Available at <https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>

39. Subsequently Federal Courts addressing DHS's new theory have rejected it and ordered relief, concluding § 1226(a) or INA § 236(a) governs noncitizens "already in the country". Court after court adopted the same reading of the INA's detention authorities and rejected ICE and EOIR's new interpretation. *See, e.g., Buenrostro-Mendez v. Bondi*, No. 4:25-cv-3726, 2025 WL 2886346 (S.D. Tex. Nov.06, 2025); *Padron Covarrubias v. Vergara*, No. 5:25-cv-00112, 2025 WL 2950097 (S.D. Tex. Oct. 8, 2025); *Hernandez Hervert v. Bondi*, No. 1:25-cv-01763-RP, 2025 (W.D. Tex Nov. 14, 2025); *Lopez Baltazar v. Vasquez*, No. 5:25-cv-00160 (W.D. Tex. Oct. 14, 2025.); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d ----, 2025 WL 2466670 (D. Minn. Aug. 27, 2025) *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda v.*

Noem, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *see also, e.g., Palma Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at *2 (D. Neb. Sept. 3, 2025) (noting that “[t]he Court tends to agree” that § 1226(a) and not § 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 at *3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-RCC, 2025 WL 2374224 at *2 (D. Neb. Aug. 14, 2025) (same).

40. 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.

41. 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].”

42. 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.

43. Statutes must be read “with a view to their place in the overall statutory scheme,” giving effect to every clause and word. *Gundy v. United States*, 588 U.S. 128, 141 (2019)

(quotation omitted); *United States ex rel. Polansky v. Exec. Health Res., Inc.*, 599 U.S. 419, 432 (2023). DHS's view collapses §§ 235 and 236, nullifies § 236(c)(1)(E), and contradicts the INA's structure.

44. Even under DHS's classification, constitutional avoidance and due process require meaningful review of whether mandatory detention actually applies (a Joseph-type inquiry), and courts must preserve habeas for unlawful detention. *See Jennings*, 583 U.S. at 303; *Clark v. Martinez*, 543 U.S. 371, 380–82 (2005); *INS v. St. Cyr*, 533 U.S. 289, 314 (2001).

45. The equities here underscore the Mathews v. Eldridge balance: (1) Petitioner's profound liberty and family interests; (2) the high risk of erroneous deprivation from DHS's categorical no-bond stance (and the value of individualized hearings); and (3) minimal governmental burden to provide the longstanding process Congress preserved. *See* 424 U.S. 319, 333, 335 (1976).

46. 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.

47. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. The 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." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

48. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like Petitioner because he was arrested in the interior. To put it another way, Petitioner had already entered and were residing in the United States at the time he was apprehended. DHS's attempt to shoehorn him into INA § 235(b)(2) is contrary to the statutory text, structure, and constitutional principles. He is entitled to release or, at minimum, a prompt bond hearing before an IJ applying the correct legal standard.

FACTS

49. Petitioner has resided in the United States since 2014. At the beginning, as an unaccompanied minor. At that time, he was sent to a refugee center and eventually released to his uncle. Since then, he has continuously resided in the United States. *See* Exhibit 3, Mr. Alfaro Cistneros' Declaration.

50. During all the time that Petitioner has been in the United States, he has never been arrested until recently. To illustrate, on August 10, 2025, he was arrested for Driving While Intoxicated (DWI). *See* Exhibit 4 – Criminal Records. After the incident, on August 10, 2025, he was transferred to ICE. *See* Exhibit 3, Mr. Alfaro Cisneros' Declaration. Petitioner is now detained at the Houston Contract Detention Facility in Houston, Texas. *See* Exhibit 1, Printout from ICE Online Detainee Locator System showing Petitioner's current detention.

51. DHS placed Petitioner in removal proceedings before the Conroe Immigration Court pursuant to 8 U.S.C. § 1229a. ICE has 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. *See* Exhibit 2, Notice to Appear.

52. Mr. Alfaro Cisneros has resided peacefully in the United States for 11 years. He is married to Yareli Hernandez, who is a United States Citizen. *See* Exhibit 5, Birth Certificate of

spouse. The couple has three U.S. Citizen children, ranging from 9 months old to 4 years old. *See* Exhibit 6, U.S. Birth Certificates of Petitioner's children.

53. At the present time, Petitioner has no disqualifying criminal conviction. As previously mentioned, on August 10, 2025, he was arrested for DWI. Federal Courts and the BIA have consistently held that a simple DWI does not fall within any criminal ground that mandates detention or bars to discretionary relief. It is categorically not a Crime Involving Moral Turpitude (CIMT). Thus, this incident cannot support any legal basis for detention or even denying bond or parole relief. *See Matter of Torres-Varela*, 23 I&N Dec. 78 (BIA 2001). Petitioner is neither a flight risk nor a danger to the community.

54. Following Petitioner's arrest and transfer to Houston Contract Detention Facility in Houston, Texas, ICE issued a custody determination to continue Petitioner's detention without an opportunity to post bond or be released on other conditions.

55. On September 12, 2025, Petitioner subsequently requested a bond redetermination hearing before the Immigration Judge. Based on the above, on September 15, 2025, the Immigration Judge denied a bond hearing, stating that she lacked jurisdiction to grant a bond pursuant to *Matter of Yajure Hurtado*. *See* Exhibit 7, Order of the Immigration Judge.

56. As a result, Petitioner remains in detention. Without relief from this court, he faces the prospect of months, or even years, in immigration custody, separated from his family and community. On information and belief, Mr. Alfaro Cisneros is eligible for relief from removal, including Cancellation of Removal for Non-Lawful Permanent Residents under INA § 240(A)(b) codified at 8 U.S.C. §1229b(b).

CLAIMS FOR RELIEF

COUNT I
VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT

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

58. 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.

59. 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 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.

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

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

COUNT II
VIOLATION OF THE BOND REGULATIONS

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

63. 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 had entered without inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.

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

65. 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.

COUNT III
VIOLATION OF DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT OF THE UNITED STATES CONSTITUTION

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

67. 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). Here, there is no question that the government has deprived Petitioner of his liberty.

68. Petitioner has a fundamental interest in liberty and being free from official restraint.

69. The government’s detention of Mr. Alvaro Cisneros without a bond redetermination hearing to determine whether he is a flight risk or danger to others violates his right to due process.

70. Respondents have deprived Mr. Alfaro Cisneros of his liberty interest protected by the Fifth Amendment by detaining him since August 25, 2025.

71. Mr. Alfaro Cisneros' detention is improper because he has been deprived of a bond hearing. A hearing is, if anything, a right to be heard, and here the immigration judge considered it a foregone conclusion that he was ineligible for bond, without considering the law or entertaining his counsel's arguments. Like the accused in criminal cases, habeas is proper.

72. 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).

73. Respondents' actions in detaining Mr. Alfaro Cisneros without any legal justification violate the Fifth Amendment.

74. 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.

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

COUNT IV

FIFTH AMENDMENT – DUE PROCESS DENIAL OF OPPORTUNITY TO CONTEST MIS-INCLUSION IN MANDATORY CATEGORY OF DETENTION

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

77. Mr. Alfaro Cisneros has a vested liberty interest in preventing his removal because he is eligible for Cancellation of Removal for Non-Lawful Permanent Residents under INA §

240(A)(b) codified at 8 U.S.C. §1229b(b) and is entitled to pursue that relief outside of detention by showing he is neither a danger to the community nor a flight risk under 8 U.S.C. §1226(a).

78. 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. Respondents' actions have caused Petitioner harm that warrants immediate relief.

COUNT V
ADMINISTRATIVE PROCEDURE ACT

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

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

81. As set forth in the previous Counts federal regulations and case law provide the procedure for a Respondent in removal proceedings like him to seek a bond redetermination by an IJ.

82. In being denied the opportunity to return to his family and pursue Cancellation of Removal for Non-Lawful Permanent Residents under INA § 240(A)(b) codified at 8 U.S.C. §1229b(b) in a non-detained court setting where he is free to gather the necessary evidence, Mr. Alfaro Cisneros 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.

83. 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.

COUNT VI
STAY OF REMOVAL CLAIM

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

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

86. The Court should grant the stay of Mr. Alfaro Cisneros' 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.

COUNT VII
SUSPENSION CLAUS CLAIM

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

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

89. 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. Alfaro Cisneros satisfies these three requirements and may invoke the Suspension Clause.

90. First, although Mr. Alfaro Cisneros is not a U.S. citizen or resident, he has lived here for over eleven years, and he qualifies for Cancellation of Removal for Non-Lawful Permanent Residents under INA § 240(A)(b) codified at 8 U.S.C. §1229b(b) because he has continuously lived in the United States for at least 10 years before he was served with the Notice to Appear and has not committed any crime that would stop the continuous physical presence, during the 10 year statutory period he has demonstrated good moral character, he does not have any disqualifying crime that would bar him for such relief and his removal would cause exceptional and extremely unusual hardship to his U.S. Citizen children and spouse. All of which establishes a substantial legal relationship with the United States.

91. Mr. Alfaro Cisneros satisfies the second factor because he was apprehended by DHS and remains detained in the United States.

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

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

COUNT VIII
INJUNCTIVE RELIEF

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

95. This Court has the discretion to enter a temporary restraining order and a preliminary injunction. *See Haitian Refugee Center v. Nelson*, 872 F.2d 1555, 1561-1562 (11th Cir.1989). “To be entitled to a preliminary injunction, the applicants must show (1) a substantial likelihood that they will prevail on the merits, (2) a substantial threat that they will suffer irreparable injury if the injunction is not granted, (3) their substantial injury outweighs the threatened harm to the party whom they seek to enjoin, and (4) granting the preliminary injunction will not disserve the public interest.” *Tex. Med. Providers Performing Abortion Servs. v. Lakey*, 667 F.3d 570, 574 (5th Cir. 2012). All four elements must be demonstrated to obtain injunctive relief. *Id.*

96. Respondents’ actions have caused Petitioner harm that warrants immediate relief

RELIEF SOUGHT

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

- a. Assume jurisdiction over this matter;
- b. Enjoin ICE from transferring Mr. Alfaro Cisneros outside the Southern District of Texas, Houston Division while this matter is pending;
- c. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;
- d. Grant the Writ of Habeas Corpus requiring that Respondents release Petitioner on his own recognizance, parole, or reasonable conditions of supervision or, in the alternative, to provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) within seven days;
- e. Declare that ICE's August 25, 2025, apprehension and detention of Mr. Alfaro Cisneros was unlawful exercise of authority because the ICE officer provided no reason that he presents a danger to the community or is a flight risk;
- f. 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;
- g. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and
- h. Grant any other and further relief that this 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 and spouse, 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.

DATED 25th of November 2025.

Respectfully submitted,

/s/ Xavier Vicente Chavez
XAVIER VICENTE CHAVEZ, OSB #1601193
State Bar # 24069495
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25775 Oak Ridge Dr. Suite 120
The Woodlands, TX 77380
(281) 296-3741
Counsel for Petitioner

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

I represent Petitioner, Gerson Isai Alfaro Cisneros, 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 25th day of November 2025.

/s/ Xavier Vicente Chavez
Counsel for Petitioner
xavier@xavierlawfirm.com
Xavier Law Firm
25775 Oak Ridge Dr. Suite 120
The Woodlands, TX 77380
(281) 296-3741(281) 296-3741

CERTIFICATE OF SERVICE

I hereby certify that on November 25, 2025, I caused a true and correct copy of the foregoing Petition for Writ of Habeas Corpus and all accompanying exhibits to be served by certified mail, return receipt requested, on the following:

U.S. Attorney's Office for the Southern District of Texas
USATXS.CivilNotice@usdoj.gov
Attn: Civil Process Clerk
1000 Louisiana St., Suite 2300,
Houston, TX 77002.

Warden, Houston Processing Center
Martin Frink
15850 Export Plaza Drive
Houston, TX 77032

Service on the United States Attorney constitutes service on all named federal Respondents in this matter, and service has also been made directly on the Warden as Petitioner's immediate custodian.

Dated this 25th day of November 2025.

/s/ Xavier Vicente Chavez
Counsel for Petitioner
xavier@xavierlawfirm.com
Xavier Law Firm
25775 Oak Ridge Dr. Suite 120
The Woodlands, TX 77380
(281) 296-3741(281) 296-3741

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

Gerson Isai Alfaro Cisneros,

Petitioner,

Case No. 25-5700

v.

BRET BRADFORD, Field Office Director of Enforcement and Removal Operations, Houston Field Office, Immigration and Customs Enforcement; KRISTI NOEM, Secretary of the U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; PAMELA BONDI, U.S. Attorney General; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; MARTIN FRINK, Warden of Houston Contract Detention Facility,

Respondents.

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