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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

ROBERTO MATA FUENTES

Petitioner,

v.

Samuel J. Olson, Field Office Director
of Enforcement and Removal
Operations, St. Paul Field Office,
Immigration and Customs
Enforcement; Kristi Noem, in her
official capacity as Secretary of the
U.S. Department of Homeland
Security; Todd Lyons, in his official
capacity as acting director of U.S.
Immigration and Customs
Enforcement; Pam Bondi, in her
official capacity as Attorney General
of the United States; Joel Brott,
Sherburne County Jail Sheriff.

Respondents.

Case No. 0:25-cv-4456

**PETITION FOR WRIT OF
HABEAS CORPUS**

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INTRODUCTION

1. Petitioner, Roberto Mata Fuentes, is in the physical custody of Respondents at the Sherburne County Jail. 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. On May 14, 2024, Petitioner received a Bona Fide Determination Notice pursuant to his Petition for Form I-918 U Nonimmigrant Status. He was subsequently issued a C14 Employment Authorization Document (EAD) pursuant to a grant of deferred action, valid from July 24, 2024 until July 23, 2028.

3. On October 30, 2025, Petitioner was arrested and taken into Immigration and Customs Enforcement (“ICE”) custody under the charges of being an Alien Present Without Admission or Parole (PWAs) under INA 212(a)(6)(A)(i) (a.k.a. 8 U.S.C. § 1182(a)(6)(A)(i)).

4. The Petitioner was also charged as an Immigrant without an Immigrant Visa under INA 212 (a)(7)(A)(i)(I) (a.k.a. 8 U.S.C. § 1182(a)(7)(A)(i)(I)).

5. Based on this allegation in Petitioner’s removal proceeding, DHS denied Petitioner release from immigration custody, consistent with a new DHS policy formalized by the BIA decision *Matter of Yajure Hurtado*, under

1 which all ICE employees are to consider anyone inadmissible under 8 U.S.C.
2 § 1182(a)(6)(A)(i)—i.e., those who entered the United States without
3 inspection—to be an “applicant for admission” under 8 U.S.C. § 1225(b)(2)(A)
4 and therefore subject to mandatory detention.

5
6 6. Petitioner sought a bond redetermination hearing before IJ
7 Sardelli, but on November 18, 2025, the IJ denied bond, having determined
8 that pursuant to, *Matter of Yajure Hurtado*, the Petitioner was subject to
9 mandatory detention under INA § 235(b)(2)(A) and thus the IJ lacked
10 jurisdiction to assess if he could be released on bond.

11 7. Petitioner’s detention on this basis violates the plain language of
12 the Immigration and Nationality Act. Section 1225(b)(2)(A) does not apply to
13 individuals like Petitioner who previously entered and are now residing in
14 the United States. Instead, such individuals are subject to a different statute,
15 8 U.S.C. § 1226(a), that allows for release on conditional parole or bond. That
16 statute expressly applies to people who, like Petitioner, are charged as
17 inadmissible for having entered the United States without inspection.

18
19 8. Respondents’ new legal interpretation is plainly contrary to the
20 statutory framework and contrary to decades of agency practice applying §
21 1226(a) to people like Petitioner.
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1 9. Accordingly, Petitioner seeks a writ of habeas corpus requiring
2 that he be released unless Respondents provide a bond hearing under §
3 1226(a) within fourteen days.
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7 JURISDICTION

8 10. Petitioner is in the physical custody of Respondents. Petitioner is
9 detained at the Sherburne County Jail in Elk River, Minnesota.

10 11. This Court has jurisdiction under 28 U.S.C. § 2241(c)(3) (habeas
11 corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2
12 of the United States Constitution (the Suspension Clause).

13 12. This Court may grant relief pursuant to 28 U.S.C. § 2241, the
14 Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28
15 U.S.C. § 1651.
16

17 VENUE

18 13. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*,
19 410 U.S. 484, 493- 500 (1973), venue lies in the United States District Court
20 for the District of Minnesota, the judicial district in which Petitioner
21 currently is detained.

22 14. Venue is also properly in this Court pursuant to 28 U.S.C. §
23 1391(e) because Respondents are employees, officers, and agencies of the
24

1 United States, and because a substantial part of the events or omissions
2 giving rise to the claims occurred in the District of Minnesota.

3 **REQUIREMENTS OF 28 U.S.C. § 2243 TO SHOW CAUSE**

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

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

17
18 **PARTIES**

19 17. Petitioner Roberto Mata Fuentes is a citizen of Mexico who has
20 resided in the United States for more than two decades. Petitioner has been
21 in immigration detention since October 30, 2025. After arresting Petitioner
22 Minneapolis, Minnesota, ICE did not set bond and Petitioner requested
23 review of his custody by an IJ. On November 18, 2025, Petitioner was denied
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1 bond by an IJ at the Fort Snelling Immigration Court, finding he lacked
2 jurisdiction under INA § 235(b)(2). The IJ determined that the Petitioner was
3 detained under INA § 235 pursuant to the BIA holding in *Yajure Hurtado*
4 and he lacked jurisdiction to determine if the Petitioner merited release on
5 bond.

6
7 18. Respondent Samuel J. Olson is the Director of the MSP Field
8 Office of ICE's Enforcement and Removal Operations division. As such,
9 Samuel Olson is Petitioner's immediate custodian and is responsible for
10 Petitioner's detention and removal. He is named in his official capacity.

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

16
17 20. Respondent Todd Lyons is the acting director of U.S.
18 Immigration and Customs Enforcement (ICE). He is responsible for
19 overseeing the federal agency responsible for Petitioner's detention. Mr.
20 Lyons has custodial authority over Petitioner and is sued in his official
21 capacity.

22
23 21. Respondent Pam Bondi is the Attorney General of the United
24 States and the senior official of the U.S. Department of Justice. She has the

1 authority to adjudicate removal cases and to oversee the Executive Office for
2 Immigration Review (EOIR), which administers the immigration courts and
3 the Board of Immigration Appeals (BIA). Ms. Bondi has custodial authority
4 over Petitioner and is sued in her official capacity.

5
6 22. Respondent Joel Brott is employed by Sherburne County as
7 Sheriff of Sherburne County Jail, where Petitioner is detained. Sherburne
8 County Jail is operated by the sheriff's department of Sherburne County. He
9 has immediate physical custody of Petitioner. He is sued in his official
10 capacity.

11 12 **LEGAL FRAMEWORK**

13 **A. Discretionary Detention**

14
15 23. "It is well established that the Fifth Amendment entitles
16 [noncitizens] to due process of law in deportation proceedings." *Demore v.*
17 *Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306
18 (1993)). "Freedom from imprisonment—from government custody, detention,
19 or other forms of physical restraint—lies at the heart of the liberty that [the
20 Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

21
22 24. Due Process requires that there be "adequate procedural
23 protections" to ensure that the government's asserted justification for a
24 noncitizen's physical confinement "outweighs the individual's

1 constitutionally protected interest in avoiding physical restraint.” *Id.* at 690
2 (quoting *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997)). In the immigration
3 context, the Supreme Court only recognizes two purposes for civil detention:
4 preventing flight and mitigating the risks of danger to the community.
5 *Zadvydas*, 533 U.S. at 690; *Demore*, 538 U.S. at 528. A noncitizen may only
6 be detained based on these two justifications if they are otherwise statutorily
7 eligible for bond. *Zadvydas*, 533 U.S. at 690.

9 25. “The fundamental requirement of due process is the opportunity
10 be heard at a meaningful time and in a meaningful manner.” *Mathews v.*
11 *Eldridge*, 424 U.S. 319, 333 (1976). To determine what process Petitioner is
12 due, this Court should consider (1) the private interest affected by the
13 government action; (2) the risk that current procedures will cause an
14 erroneous deprivation of that private interest, and the extent to which that
15 risk could be reduced by additional safeguards; and (3) the government's
16 interest in maintaining the current procedures, including the governmental
17 function involved and the fiscal and administrative burdens that the
18 substitute procedural requirement would entail. *Id.* at 335.

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

22 27. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in
23 standard removal proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals
24

1 in § 1226(a) detention are generally entitled to a bond hearing at the outset of
2 their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who
3 have been arrested, charged with, or convicted of certain crimes are subject to
4 mandatory detention, *see* 8 U.S.C. § 1226(c).

5
6 28. Second, the INA provides for mandatory detention of noncitizens
7 subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent
8 arrivals seeking admission referred to under § 1225(b)(2).

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

12 30. This case concerns the detention provisions at §§ 1226(a) and
13 1225(b)(2).

14
15 31. The detention provisions at § 1226(a) and § 1225(b)(2) were
16 enacted as part of the Illegal Immigration Reform and Immigrant
17 Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104-208, Div. C, §§ 302–03,
18 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section 1226(a) was
19 most recently amended earlier this year by the Laken Riley Act, Pub. L.
20 No.119-1, 139 Stat. 3 (2025).

21 32. Following the enactment of the IIRIRA, EOIR drafted new
22 regulations explaining that, in general, people who entered the country
23 without inspection were not considered detained under § 1225 and that they
24

1 were instead detained under § 1226(a). *See* Inspection and Expedited
2 Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal
3 Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

4 33. Thus, in the decades that followed, most people who entered
5 without inspection and were placed in standard removal proceedings received
6 bond hearings, unless their criminal history rendered them ineligible. That
7 practice was consistent with many more decades of prior practice, in which
8 noncitizens who were not deemed “arriving” were entitled to a custody
9 hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994);
10 *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a)
11 simply “restates” the detention authority previously found at § 1252(a)).
12

13 34. On July 8, 2025, ICE, “in coordination with” DOJ, announced a
14 new policy that rejected well-established understanding of the statutory
15 framework and reversed decades of practice.
16

17 35. The new policy, entitled “Interim Guidance Regarding Detention
18 Authority for Applicants for Admission,” claims that all persons who entered
19 the United States without inspection shall now be deemed “applicants for
20 admission” under 8 U.S.C. § 1225, and therefore are subject to mandatory
21 detention provision under § 1225(b)(2)(A). The policy applies regardless of
22 when a person is apprehended and affects those who have resided in the
23 United States for months, years, and even decades.
24

1 36. On September 5, 2025, the Board of Immigration Appeals (BIA)
2 adopted this same position in the case of *Matter of Yajure Hurtado*, 29 I&N
3 Dec. 216 (BIA 2025). That decision holds that all noncitizens who entered the
4 United States without admission or parole are considered applicants for
5 admission and are ineligible for immigration judge bond hearings.

6 37. Under the Supreme Court's recent decision in *Loper Bright v.*
7 *Raimondo*, this Court should independently interpret the statute and give
8 the BIA's expansive interpretation of § 1225(b)(2) no weight, as it conflicts
9 with the statute, regulations, and precedent. 603 U.S. 369 (2024).

10 38. ICE and EOIR have adopted this position even though federal
11 courts have rejected this exact conclusion. For example, after IJs in the
12 Tacoma, Washington, immigration court stopped providing bond hearings for
13 persons who entered the United States without inspection and who have
14 since resided here, the U.S. District Court in the Western District of
15 Washington found that such a reading of the INA is likely unlawful and that
16 § 1226(a), not § 1225(b), applies to noncitizens who are not apprehended upon
17 arrival to the United States. *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239
18 (W.D. Wash. 2025); *see also Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025
19 WL 1869299, at *8 (D. Mass. July 7, 2025) (granting habeas petition based on
20 same conclusion).
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1 39. “The idea that a different detention scheme would apply to non-
2 citizens ‘already in the country,’ as compared to those ‘seeking admission into
3 the country,’ is consonant with the core logic of our immigration system.”

4 *Martinez v. Hyde*, CV 25-11613-BEM, 2025 WL 2084238 (D. Mass. July 24,
5 2025) (citing *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018)).
6

7 40. DHS’s and DOJ’s interpretation defies the INA. As the *Rodriguez*
8 *Vazquez* court explained, the plain text of the statutory provisions
9 demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

10 41. Section 1226(a) applies by default to all persons “pending a
11 decision on whether the [noncitizen] is to be removed from the United
12 States.” These removal hearings are held under § 1229a, to “decid[e] the
13 inadmissibility or deportability of a[] [noncitizen].”
14

15 42. The text of § 1226 also explicitly applies to people charged as
16 being inadmissible, including those who entered without inspection. *See* 8
17 U.S.C. § 1226(c)(1)(E). Subparagraph (E)’s reference to such people makes
18 clear that, by default, such people are afforded a bond hearing under
19 subsection (a). As the *Rodriguez Vazquez* court explained, “[w]hen Congress
20 creates “specific exceptions” to a statute’s applicability, it “proves” that
21 absent those exceptions, the statute generally applies. *Rodriguez v. Bostock*,
22 779 F. Supp. 3d 1239, 1257 (W.D. Wash. 2025) (citing *Shady Grove*
23 *Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).
24

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

4 44. By contrast, § 1225(b) applies to people arriving at U.S. ports of
5 entry or who recently entered the United States. The statute's entire
6 framework is premised on inspections at the border of people who are
7 "seeking admission" to the United States. 8 U.S.C.

8 § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this
9 mandatory detention scheme applies "at the Nation's borders and ports of
10 entry, where the Government must determine whether a[] [noncitizen]
11 seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S.
12 281, 287 (2018).

13 45. Accordingly, the mandatory detention provision of § 1225(b)(2)
14 does not apply to people like Petitioner, who have already entered and were
15 residing in the United States at the time they were apprehended.

16 **B. U Visa Eligibility, Adjudication, and Benefits**

17 46. A noncitizen is eligible for a U visa if (1) the applicant "suffered
18 substantial physical or mental abuse as a result of having been a victim of"
19 certain explicitly identified types of crimes; (2) the applicant "possesses
20 information concerning [the] criminal activitiy"; (3) the applicant "has been
21 helpful, is being helpful or is likely to be helpful" to government officials
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1 regarding the criminal activity; and (4) the criminal activity “occurred in the
2 United States” or violated United States law. 8 U.S.C. §§ 1191(a)(15)(U)(i)(I-
3 IV).

4 47. Congress capped the number of principal U visas that may be
5 granted annually at 10,000. 8 U.S.C. § 1184(p)(2).
6

7 48. After the TVPRA authorized employment for U visa petitioners
8 with “bona fide” petitions, 8 U.S.C. § 8 U.S.C. § 1184(p)(6), USCIS created a
9 formal and streamlined BFD process in 2021 for making such bona fide
10 determinations.

11 49. Thus, the U visa adjudication process today “involves three
12 distinct adjudicative processes:” (1) the streamlined BFD process, (2) for
13 petitions in which the BFD process did not result in deferred action and work
14 authorization, full adjudication for potential placement on the U visa waiting
15 list, and then (3) granting of a U visa once available. USCIS PM, vol. 3, pt. C,
16 ch. 4.
17

18 50. In the BFD process, USCIS conducts a streamlined initial review
19 to determine whether an application is “bona fide.” *Id.* The determination is
20 “based on the petitioner's compliance with initial evidence requirements and
21 successful completion of background checks,” after which USCIS “considers
22 any national security and public safety risks, as well as any other relevant
23 considerations,” in deciding whether to issue an employment authorization
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1 document (“EAD”) and deferred action. USCIS PM, vol. 3, pt. C, ch. 5. “If
2 USCIS determines a principal petitioner and any other qualifying family
3 members have a bona fide petition and warrant a favorable exercise of
4 discretion, USCIS issues them BFD EADs and grants deferred action.”
5 USCIS PM, vol. 3, pt. C, Ch. 5.C.

6
7 51. Under USCIS’s BFD policy, petitioners granted a BFD EAD and
8 deferred action are placed directly in the queue to wait for a U visa to become
9 available.

10 52. A BFD EAD and deferred action are valid for four years and
11 renewable. USCIS PM, vol 3, Pt. C, ch. 5.

12 53. USCIS identifies four circumstances when early revocation of
13 deferred action is appropriate: (1) “if USCIS determine a national security or
14 public safety concern is present,” (2) “if USCIS determines the BFD EAD and
15 deferred action is no longer warranted,” (3) if “the Form I-918 Supplement B
16 law enforcement certification is withdrawn” by the certifying agency, or (4)
17 USCIS “determines the prior BFD EAD was issued in error.” *Id.* If changed
18 circumstances appear to warrant such revocation, USCIS “initiates a waiting
19 list adjudication to gather additional information and evidence.” *Id.*, ch.
20 5.C.2.
21

22 **FACTS**

1 54. Petitioner has resided in the United States for two decades, and
2 lived in Minneapolis, Minnesota, prior to his detention.

3 55. On October 30, 2025, the U.S. Department of Homeland
4 Security's Form I-213, from the day of the arrest, recorded that Petitioner
5 was arrested for being "an alien present in the United States without being
6 admitted or paroled."
7

8 56. The U.S. Department of Homeland Security's same Form I-213
9 list an additional charge of that Petitioner is an "Immigrant Without An
10 Immigrant Visa," but records no facts in regard to the "Alienage and
11 Removability" of the Petitioner to support that charge.

12 57. On October 30, 2025, the U.S. Department of Homeland
13 Security's NTA checked the box informing the Petitioner "You are an alien
14 present in the United States who has not been admitted or paroled." The
15 arriving alien box is not checked.
16

17 58. The Petitioner is now detained at the Sherburne County Jail.

18 59. Petitioner's criminal history involves no offenses subjecting him
19 to mandatory detention. His negligible criminal history consists of minor
20 regulatory traffic infractions that have all been resolved.

21 60. Petitioner is currently in removal proceedings before the Fort
22 Snelling Immigration Court pursuant to 8 U.S.C. § 1229a.
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1 61. Petitioner has three United States Citizen children, two of whom
2 are minors.

3 62. Petitioner has been continuously employed for the last two
4 decades in Minnesota.

5 63. Petitioner has relief available to him. He has a prima facie case
6 for 42(b) Cancellation of Removal for Non-Legal Permanent Residents.
7

8 64. Petitioner also has been granted deferred action pursuant to his
9 Bona Fide Determination (BFD) of his pending U visa application.

10 65. Petitioner is neither a flight risk nor a danger to the community.

11 66. Following Petitioner's arrest and transfer to Sherburne County
12 Jail, Petitioner subsequently requested a bond redetermination hearing
13 before an IJ.

14 67. On November 18, 2025, an IJ affirmed he lacked jurisdiction
15 under the *Yajure Hurtado* decision.
16

17 68. As a result, Petitioner remains in detention. Without relief from
18 this court, he faces the prospect of months, or even years, in immigration
19 custody, separated from his family, his business and community.

20 69. Any appeal to the BIA, while available, is futile for his release.
21 The recent BIA decision in *Yajure Hurtado* would subject the Petitioner to
22 detention without discretionary bond, likely in contravention of federal law.
23 Moreover, in the *Rodriguez Vazquez* litigation, where EOIR and the Attorney
24

1 General were defendants, DOJ affirmed its position that individuals like
2 Petitioner are applicants for admission and subject to detention under §
3 1225(b)(2)(A). See Mot. to Dismiss, *Rodriguez Vazquez v. Bostock*, No. 3:25-
4 CV-05240-TMC (W.D. Wash. June 6, 2025), Dkt. 49 at 27–31.

5
6
7 **CLAIMS FOR RELIEF**

8 **COUNT I**

9 **Violation of 8 U.S.C. § 1226(a)**
10 **Unlawful Denial of Release on Bond**

11 70. Petitioner incorporates by reference the allegations of fact set
12 forth in the preceding paragraphs.

13 71. Petitioner may be detained, if at all, pursuant to 8 U.S.C. §
14 1226(a).

15 72. Under § 1226(a) and its associated regulations, Petitioner is
16 entitled to a bond hearing. 8 C.F.R. 236.1(d) & 1003.19(a)-(f).

17 73. Petitioner has not been, and will not be, provided with a bond
18 hearing as required by law.

19 74. Petitioner's continuing detention is therefore unlawful.
20
21

22
23 **COUNT II**
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1 **Violation of the Bond Regulations, 8 C.F.R. §§ 236.1, 1236.1 and**
2 **1003.19 Unlawful Denial of Release on Bond**

3 75. Petitioner incorporates by reference the allegations of fact set
4 forth in the preceding paragraphs.

5 76. In 1997, after Congress amended the INA through IIRIRA, EOIR
6 and the then-Immigration and Naturalization Service (“INS”) issued an
7 interim rule to interpret and apply IIRIRA. Specifically, under the heading of
8 “Apprehension, Custody, and Detention of [Noncitizens],” the agencies
9 explained that “[d]espite being applicants for admission, [noncitizens] who
10 are present without having been admitted or paroled (formerly referred to as
11 [noncitizens] who entered without inspection) will be eligible for bond and
12 bond redetermination.” 62 Fed. Reg. at 10323. The agencies thus made clear
13 that individuals who had entered without inspection were eligible for
14 consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226
15 and its implementing regulations.

16 77. The application of § 1225(b)(2) to Petitioner unlawfully mandates
17 his continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.
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23 **COUNT III**

1 **Violation of 8 U.S.C. § 1225(b)(2) Unlawful Detention Under This**
2 **Provision**

3 78. Petitioner incorporates by reference the allegations of fact set
4 forth in the preceding paragraphs.

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

12 80. Upon information and belief, Petitioner has resided in the U.S.
13 for two decades. He is therefore neither an arriving alien nor an alien who is
14 now seeking admission to the United States.

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

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23 **COUNT IV**
24 **Violation of Due Process**

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

4 83. The government may not deprive a person of life, liberty, or
5 property without due process of law. U.S. Const. amend. V. “Freedom from
6 imprisonment—from government custody, detention, or other forms of
7 physical restraint—lies at the heart of the liberty that the Clause protects.”
8 *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S.Ct. 2491, 150 L.Ed.2d 653
9 (2001).

10
11 84. The government’s detention of Petitioner is unjustified.
12 Respondents deprived the Petitioner of the opportunity to demonstrate he
13 need not be detained. See *Zadvydas*, 533 U.S. at 690 (finding immigration
14 detention must further the twin goals of (1) ensuring the noncitizen’s
15 appearance during removal proceedings and (2) preventing danger to the
16 community). Petitioner cannot present facts demonstrating that he can be
17 safely released back to his community when the Respondents illegally
18 deprive any IJ of jurisdiction to hear his case.

19
20 85. Respondents’ continued immigration detention of the Petitioner
21 is disconnected from a “reasonable relationship” to any legitimate
22 nonpunitive purpose. *Zadvydas*, 533 U.S. at 690. Petitioner has a
23 fundamental interest in liberty and being free from official restraint.
24

1 86. The government's detention of Petitioner without a bond
2 redetermination hearing to determine whether he is a flight risk or danger to
3 others violates his right to due process. The court should issue a writ of
4 habeas corpus directing Respondents to release Petitioner to safeguard his
5 Fifth Amendment liberties.
6

7 **COUNT V**

8 **Respondents' Custody Determination is Contrary to Law**

9 87. Petitioner incorporates by reference the preceding paragraphs.

10 88. The Administrative Procedure Act (APA) provides that courts
11 "shall ... hold unlawful and set aside agency action" that is "arbitrary,
12 capricious, an abuse of discretion, or otherwise not in accordance with
13 law" or is "unsupported by substantial evidence." 5 U.S.C. §§ 706(2)(A),
14 (E).
15

16 89. The APA claim is properly raised in the habeas petition because
17 it concerns a regulation that impacts the fact and duration of
18 confinement. "Challenges to the validity of any confinement or to
19 particulars affecting its duration are the province of habeas corpus[.]"
20 *Muhammad v. Close*, 540 U.S. 749, 750 (2004); *see also Otey v. Hopkins*,
21 5 F.3d 1125, 1130 (8th Cir. 1993).
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1 90. Here, Petitioner’s APA challenge concerns the *Yajure Hurtado*
2 decision that affected the duration of Mr. Mata Fuentes’s confinement
3 by extending Petitioner’s incarceration by stripping the IJ of
4 jurisdiction.

5 91. Under *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369
6 (2024), the Supreme Court held that “[c]ourts must exercise their
7 independent judgment in deciding whether an agency has acted within
8 its statutory authority, as the APA requires.” *Loper Bright Enters. v.*
9 *Raimondo*, 603 U.S. 369, 410 (2024).

10 92. In *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), the
11 BIA held that all noncitizens who entered the United States without
12 admission or parole are now considered applicants for admission under
13 8 U.S.C. § 1225 and thus are ineligible for immigration judge bond
14 hearings. This precedential decision applies to those in Petitioner’s
15 circumstances and was decided after the IJ ordered him to be released
16 on bond. As such, it will be applied to the currently pending appeal
17 with the BIA.

18 93. Because the BIA’s precedential decision *Matter of Yajure*
19 *Hurtado*, categorizes Petitioner as detained under § 1225(b), *a statute*
20 *which does not apply to him*, the BIA decision is arbitrary, capricious,
21 and unlawful and should be set aside. Instead, Petitioner should be
22
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1 categorized as detained under § 1226(a), which allows for release on
2 conditional parole or bond for individuals who entered the United
3 States without inspection.

4 94. For this reason, this Court should enter a declaratory judgment
5 finding that Petitioner is detained under 8 U.S.C. § 1226(a) and order
6 him released on the bond issued by the IJ.
7

8 **COUNT VI**

9 ***Matter of Yajure Hurtado* Violates Procedural Due Process as**
10 **Applied**

11 95. Petitioner incorporates by reference the preceding paragraphs.

12 96. When the government interferes with a liberty interest, “the
13 procedures attendant upon that deprivation [must be] constitutionally
14 sufficient.” *Ky. Dept. of Corrections v. Thompson*, 490 U.S. at 460. The
15 constitutional sufficiency of procedures is determined by weighing
16 three factors: (1) the private interest that will be affected by the official
17 action, (2) the risk of erroneous deprivation of that interest through the
18 available procedures, and (3) the government’s interest, including the
19 function involved and the fiscal and administrative burdens that
20 additional or substitute procedures would entail. *Mathews*, 424 U.S. at
21 335.
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97. Petitioner has a weighty liberty interest as his freedom “from government . . . detention . . . lies at the heart of the liberty that [the Fifth Amendment] protects.” *Zadvydas*, 533 U.S. at 693.

98. The risk of erroneous deprivation of Petitioner’s liberty is extremely high, given that the government, pursuant to *Matter of Yajure Hurtado*, is detaining Petitioner under a statute that does not apply to him and denying him his statutory right to a bond hearing on the erroneous assertion that he is subject to mandatory detention.

99. Finally, the government’s interest in preserving its unilateral authority to prevent the release of noncitizens who have already shown they are neither a flight risk nor a danger is minimal. Providing additional procedural protections here introduces no additional administrative burdens as Petitioner is statutorily entitled to a bond hearing under 8 U.S.C. § 1226(a).

100. Because Respondents have custody of Petitioner in violation of his Fifth Amendment rights, the Court should issue a writ of habeas corpus directing Respondents to release Petitioner to safeguard his constitutional liberties. 28 U.S.C. § 2241. Numerous courts throughout the country have found that the use of the mandatory detention provision, as affirmed in *Matter of Yajure-Hurtado*, violates an

1 individual's right to meaningful procedural due process. *See, e.g.,*
2 *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *12
3 (W.D. Tex. Sept. 22, 2025); *Lopez Santos v. Noem*, No. 3:25-CV-01193,
4 2025 WL 2642278, at *5 (W.D. La. Sept. 11, 2025); *Kostak v. Trump*,
5 No. CV 3:25-1093, 2025 WL 2472136, at *3 (W.D. La. Aug. 27, 2025). As
6 such, this Court should likewise find that Petitioner's detention
7 represents a violation of his right to procedural due process and order
8 him released according to the bond conditions set by the IJ.
9

10 COUNT VII

11 **Respondents' Detention Is An Unlawful Violation of A Grant of** 12 **Deferred Action Under the APA**

13
14 101. Petitioner incorporates by reference the preceding paragraphs.

15 102. Once DHS/USCIS has determined a U Visa petition is bona fide,
16 USCIS next determines whether the petitioner poses a risk to national
17 security or public safety by reviewing the results of background checks and
18 considering other relevant discretionary factors, and whether to exercise its
19 discretion by issuing a Bona Fide Determination Employment Authorization
20 Document ("BFD EAD") and granting deferred action to a petitioner. 3
21 USCIS-PM C.5(C)(1); see also 8 U.S.C. § 1182(a)(3).
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1 103. If DHS/USCIS grants the U petitioner a BFD EAD, DHS/USCIS
2 has then also exercised its discretion to grant him deferred action and for his
3 removal (deportation) to be stayed for the period of the BFD EAD. 3 USCIS-
4 PM C.5.

5 104. Historically, deferred action originated as a “commendable
6 exercise in administrative discretion,” by which, “To ameliorate a harsh and
7 unjust outcome, the INS may decline to institute proceedings, terminate
8 proceedings, or *decline to execute a final order of deportation.*” *Reno v. Am.-*
9 *Arab Anti-Discrimination Comm.*, 525 U.S. 471, 484 (1999) (emphasis added).
10

11 105. On May 4, 2015, USCIC granted deferred action pursuant to a
12 Bona Fide Determination. While DHS (ICE) has not separately exercised
13 prosecutorial discretion to defer removal, USCIS as an agency withing DHS,
14 has granted Petitioner deferred action as a matter of law and administrative
15 discretion.
16

17 106. For this reason, this Court should enter a declaratory judgment
18 finding that Petitioner cannot be lawfully detained following a grant of
19 deferred action and order him immediately.
20

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Petitioner prays that this Court grant the following relief:
23

- 24 a. Assume jurisdiction over this matter;

- 1 b. Issue a writ of habeas corpus requiring that Respondents release
2 Petitioner or provide Petitioner with a bond hearing pursuant to
3 8 U.S.C. § 1226(a) within 14 days;
- 4 c. Issue an Order to Show Cause pursuant to 28 U.S.C. § 2243,
5 directing Respondents to show cause why the petition for writ of
6 habeas corpus filed by Petitioner pursuant to 28 U.S.C. § 2241
7 should not be granted within three days;
- 8 d. Award Petitioner attorney's fees and costs under the Equal
9 Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412,
10 and on any other basis justified under law;
- 11 e. Grant any other and further relief that this Court deems just and
12 proper.
13
14

15 DATED this 25th day of November 2025.

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