UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION

Adrian Garcia Puente Petitioner, **Orlando Rodriguez**, Warden, Webb County Detention Center; **Juan Agudelo,** Field Office Director of Laredo Field Office, U.S. Immigration and Customs Enforcement; **Todd M. Lyons**, Director of United States Immigration and Customs Enforcement; **Kristi Lynn Noem,** Secretary of the U.S. Department of Homeland Security; And **Pam Bondi,** Attorney General of the United States, in their official capacities, Respondents	)	Case No. _____

EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. §2241, ORDER TO SHOW CAUSE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

The Petitioner, Adrian Garcia Puente ("Mr. Adrian Garcia Puente"), respectfully petitions this Honorable Court for a Writ of Habeas Corpus and Order to Show Cause to remedy Petitioner's unlawful detention and attempted removal from the United States by Respondents, and states as follows:

INTRODUCTION

1. This is a Petition for a Writ of Habeas Corpus hereby filed on behalf of Mr. Adrian Garcia Puente seeking an order to show cause, declaratory and injunctive relief to compel his immediate release from the immigration jail where he has been held by the U.S. Department of Homeland Security (DHS) since being unlawfully detained on September 14, 2025, without first being provided a due process hearing to determine whether his re-incarceration is justified.

2. Petitioner must be released from custody unless and until DHS proves to a neutral adjudicator, by clear and convincing evidence, that Petitioner is a flight risk or a danger to the community. DHS has not been able to do so. Due process requires the government to provide noncitizens with notice and a hearing prior to detention, and a showing of changed circumstances, or a meaningful opportunity to respond. That has not happened in the case at bar and does not satisfy the procedural requirements of the Fifth Amendment.

JURISDICTION

This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq*.

3. This Court has jurisdiction over the present action pursuant to 28 U.S.C. § 1331, general federal question jurisdiction; 5 U.S.C. § 701 *et seq.*, All Writs Act; 28 U.S.C. § 2241 *et seq*., habeas corpus; 28 U.S.C. § 2201, the Declaratory Judgment Act; Art. 1, § 9, Cl. 2 of the United States Constitution (Suspension Clause); Art. 3 of the United States Constitution, and the common law.

VENUE

4. Venue is proper because Petitioner is detained at Webb County Detention Center in Laredo, Texas, which is within the jurisdiction of this District.

5. In addition, Venue is proper in this District because Respondents are officers, employees, or agencies of the United States and a substantial part of the events or omissions giving rise to his claims occurred in this District, and Petitioner resides in this District, and no real property is involved in this action. 28 U.S.C. § 1391(e).

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

6. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the respondents "forthwith," unless the 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).

7. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England, 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).

PARTIES

8. Petitioner is a Citizen of Mexico. Petitioner is currently detained since September 14, 2025, at Laredo Processing Center-Core Civic in Laredo, TX. He is in the custody, and under the direct control, of Respondents and their agents.

9. Respondent Orlando Rodriguez is the Warden of Webb County Detention Center, and he

has immediate physical custody of Petitioner pursuant to the facility's contract with U.S. Immigration and Customs Enforcement to detain noncitizens and is a legal custodian of Petitioner. Respondent Orlando Rodriguez is a legal custodian of Petitioner.

10. Respondent Juan Agudelo is sued in his official capacity as the Field Office Director of the Laredo Field Office of U.S. Immigration and Customs Enforcement. Respondent Agudelo is a legal custodian of Petitioner and has authority to release his.

11. Respondent Todd M. Lyons is the Acting Director of U.S. Immigration and Customs Enforcement (ICE) and is named in his official capacity. Among other things, ICE is responsible for the administration and enforcement of immigration laws, including removal of noncitizens. In his official capacity as head of ICE, he is the legal custodian of Petitioner. He is also the author of the July 8, 2025, new guidelines for mandatory detention.

12. Respondent Kristi Lynn Noem is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security (DHS). In this capacity, Respondent Noem is responsible for the implementation and enforcement of the Immigration and Nationality Act, and oversees U.S. Immigration and Customs Enforcement, the component agency responsible for Petitioner's detention and custody. Respondent Noem is a legal custodian of Petitioner.

13. Respondent Pam Bondi is sued in her official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice (DOJ). In that capacity, he has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the BIA. Respondent Bondi is a legal custodian of Petitioner.

STATEMENT OF FACTS

14. Petitoner is a 34-year-old citizen of Mexico. He has been living in the United States since on or about 2007. He entered without inspection by wading the river. Petitioner has no criminal history, poses no danger to the community and is not a flight risk.

15. He attended school in Laredo and was living in common law. He has three children ages 14, 12 and 9. His common law union failed, and they have been separated for several years. However, he is very involved with his children, he visits them weekly and pays for all the household bills.

16. Petitioner is concerned for his children's health due to the fact that the 14 yr. old, who is a freshman at a local high school was diagnosed this month with Type 2 Diabetes. He requires further treatment. In addition, his 12 year old was screened by the school nurse on November for spinal scoliosis and was referred to a specialist. He is worried that they need his financial assistance to be able to travel and provide for their medical needs.

17. During the last couple of years, he has been in a serious relationship and his U.S. citizen fiancée submitted an application to the warden so they can get married, which is pending. If approved they will have to get married by the visiting window. Petitioner should not be detained and thus is seeking this Writ of Habeas.

Removal Proceedings

18. On September 13, 2025, Petitioner was detained by ICE at the checkpoint as he was using his valid employment authorization card to travel, as he had done so previously.

He was detained and given a Notice to Appear (NTA) for Removal Proceedings. (Attachment A)

19. Since September 13th, 2025, Petitioner remains separated from his family, his three U.S. citizen children and his fiancée.

20. Petitioner was not detained or arrested for the commission of any crime on September 13th, 2025, and does not have any criminal record.

Representation By Undersigned Counsel in Removal Proceedings

21. On October 23, 2025, Undersigned Counsel represented Petitioner at his Removal Proceedings Master Calendar Hearing.

22. He was set for an Individual hearing on a fast detention docket for December 11, 2025.

23. Due to his prolonged detention he has been unable and very limited to assist in gathering documentary evidence for his defense in removal court.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

24. Petitioner submits that he is not barred by principles of administrative exhaustion as he is challenging his ongoing detention as a violation of due process. *See Petgrave v. Aleman*, 529 F. Supp. 3d 665, 672 n 14 (S.D. Tex 2021)

25. Furthermore, on July 8, 2025, Immigrations and Customs Enforcement (ICE) implemented a new policy "Interim Guidance Regarding Detention Authority for Applicants for Admission." *See Todd Lyons Interim ICE Guidance Regarding Detention Authority for Applicants for Admission,"* July 8, 2025. Whereby they suddenly changed their application of immigration authority statutes to justify mandatory detention, switching to 8USC§1225, instead of 8 U.S.C. which has been applied since 1996. In addition, this new guidance labels all noncitizens as "applicants for admission" and

makes no distinction if they were already present in the country for years or barely arriving in the United States. This new guidance contradicts established safeguards and establishes mandatory detention without a possibility of a bond.

26. In addition, rather than properly analyzing or interpreting this new guidance in light of the due process violations, on September 5, 2025 the Board of Immigration Appeals (BIA) issued a decision reversing almost thirty years of precedent and in essence rubber stamping ICE's new guidance on mandatory detention and depriving noncitizens of the opportunity to seek parole through ICE or a bond determination by an Immigration Judge who now does not have jurisdiction to issue a bond under this new mandatory detention scheme. *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). The BIA decision, which is binding precedent on immigration judges, held that immigration judges "lack authority to hear bond requests or to grant bond to aliens…who are present in the United States without admission" and thus are subject to mandatory detention applying now another section of the code, 8 U.S.C. §1225(b)(2). *Id*.

27. Undersigned counsel also sought the possibility of a parole request with the local ICE-ERO office and was informed based on this recent guidance; they lack parole authority as well.

28. Therefore, Petitioner contends that the current erroneous interpretation by the BIA and continuous application of the ICE overreaching guidelines have deprived Petitioner of any meaningful opportunity for a request for parole from ICE or a bond redetermination from an Immigration Judge who does not have authority and thus there is no requirement to exhaust administration remedies as this exercise "will be a patently futile course of

action." *Gallegos -Hernandez v. United States*, 688 F. 3d 190, 194 (5th Cir. 2012 (quoting *Fuller v. Rich*, 11 F. 3d 61, 62 (5th Cir. 1994)

29. Furthermore, since Petitioner is not seeking a review of a final order of removal under 8 U.S.C.§1252(d)(1), we respectfully submit that exhaustion of administrative remedies is not required for this petition.

SUBJECT MATTER JURISDICTION

30. Petitioner asserts that this Honorable Court has subject matter jurisdiction to hear this case because he is challenging the statutory interpretation and application of the mandatory detention statute to his circumstances.

31. Out of an abundance of caution and to expedite matters, based on a review of recent similar habeas corpus cases, we anticipate the government may argue this court lacks subject matter jurisdiction and hereby submit the following distinguishable factors for this case.

32. This case is not subject to 8 U.S.C§1252(a)(5) as this particular provision only concerns challenges to "an order of removal" that is not applicable in this case. Therefore, in this case there is no final removal order, and a habeas petitioner's "arrest and detention claims are independent of any future removal order", thus §1252(a)(5) does not preclude the district court's hearing of these claims. *Medina v. U.S. Dep't Homeland Security* No. 17-cv-218,2017 WL 2954719, at *15 (W.D. Wash. Mar. 14, 2017); accord *Jennings,* 583 U.S. at 320, 138 S.Ct. 830 (Thomas, J., concurring) (describing §152(a)(5)'s narrow applicability to support a broader reading of a separate jurisdiction-channeling provision, §1252(b)(9)).

33. Additionally, Petitioner is not seeking jurisdiction based on 8 U.S.C.1252(g), as that statute is triggered in challenges to "any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien.

34. However, the Supreme Court has "not interpret[ed] this language to sweep in any claim that can technically be said to 'arise from' the three listed actions of the Attorney General. Instead, [the Court has] read the language to refer to just those three specific actions themselves." *Jennings*, 583 U.S. at 294, 138 S. Ct. 830 (citing *Reno v. Am.-Arab Anti-Discrimination Comm*, 525 U.S. 471, 482-83, 119 S. Ct. 936, 142 L.Ed. 2d 940 (1999).

35. As stated in *Duarte*, §1252(g) applies only "to protect from judicial intervention the Attorney General's long-established discretion to decide whether and when to prosecute or adjudicate removal proceeding or to execute removal orders." *Duarte*, 27 F. 4th at 1055 (quoting *Alvidres-Reyes v. Reno,* 180 F.3d 199, 201 (5th Cir. 1999)).

36. Therefore, the statute "does not bar courts from reviewing an alien's detention order, because such an order, while intimately related to efforts to deport, is not itself a decision to "execute removal orders" and thus does not implicate section 1252(g)." *Cardoso v. Reno*, 216 F. 3d 512, 516-17 (5th Cir. 2000) (citation omitted); accord *Kong v. United States*, 62 F. 4th 608, 617-18 (1st Cir. 2023)(collecting cases).

37. In the case at bar, Petitioner is challenging his ongoing detention, and such claims are not barred by §1252(g) *See, eg. Lopez Santos v. Noem*, No. 25-cv-1193, 2025 WL 2642278, at *2-3 (W.D. La. Sept. 11, 2025).

38. Another pertinent jurisdictional provision that must be distinguished is §1226(e) as it relates to claims brought by those challenging their immigration detention. "The Attorney General's discretionary judgment regarding the application of this section shall not be subject to review. No court may set aside any action or decision by the Attorney General under this section regarding the detention of any alien or the revocation or denial of bond or parole." 8 U.S.C.§1226(e).

39. The major distinction is that this section only shields the Attorney General's discretionary detention decision, but it "does not preclude 'challenges to the statutory framework that permits the alien's detention without bail.'" *Jennings*, 583 U.S. at 295, 138 S. C. 830 (cleaned up)(quoting *Demore v. Kim*, 538 U.S. 510, 516, 123 S.Ct. 1708, 155 L.Ed.2d 724 (2003)); *see also Zadvydas v. Davis*, 533 U.S. 678, 688, 121 S. Ct. 2491, 150 L.Ed. 2d 653 (2001).

40. Therefore, the Court "retain[s] jurisdiction to review [a noncitizen's] detention insofar as that detention presents constitutional issues, such as those raised in a habeas petition." *Oyedule v. Chertoff,* 125 F. App'x 543, 546 (5th Cir. 2005); accord *Maldonado v. Macias*, 150 F. Supp. 3d 788, 794 (W.D. Tex. 2015) (*citing Baez v. Bureau of Imm. & Customs Enf't,* 150 F. App'x 311, 312 (5th Cir. 2005)).

LEGAL FRAMEWORK

PETITIONER REQUESTS REVIEW OF DHS' STATUTORY AUTHORITY TO DETAIN PETITIONER UNDER 8 U.S.C.§1225(b)(2) instead of §1226(a)

41. Petitioner was detained as he attempted to cross the IH-35 checkpoint with his valid employment authorization card, issued by USCIS.

42. Petitioner has been detained since September 13th, 2025, and deprived of his liberty.

43. INA §235 provides the legal framework to process and inspect individuals who are seeking entry into the United States. This section is applied at the border or ports of entry and when an applicant is not allowed to be admitted, the alien shall be detained for a [removal]proceeding. The use of the word shall, makes it mandatory and may subject individuals to mandatory detention under §235(b)(2)(A). The only possible release from this kind of mandatory detention is if granted a parole by DHS under INA §212(d)(5). If an individual is properly detained under §235, there is no avenue for an immigration judge to determine a bond.

44. The definition of an "applicant for admission" includes persons present in the United States who have not formally requested or received permission to enter. *See Matter of Miguel Lemus-Losa*, 24 I&N Dec. 373 (BIA2007). Although these persons are deemed "applicants" they are not automatically categorized under §235(b) because the government must comply with the arrest and detention provisions of §287 and §236.

45. As stated above, Petitioner cannot be considered an "arriving alien" because he was not detained at or near a port of entry, he was not apprehended "arriving in" the United States or "shortly after" crossing the border.

46. Instead, he has been residing in the United States since on or about 2007.

47. There are established and significant temporal and geographic limits for DHS to apply INA§235.

48. For almost thirty years, DHS has charged aliens as applicants for admission only if they were apprehended within 14 days of entry and within 100 miles of the border, this group of people is subject to mandatory detention as an arriving alien under §235. *See also Department of Homeland Security v.Thuraissigiam*, 591 U.S. 121 (2020).

49. Therefore, the remaining noncitizens who are apprehended after fourteen days of entry or in the interior of the U.S. are subject to §236 of the INA, qualify for a bond re-determination and should not be subject to mandatory detention.

50. Section 235 does not encompass every arrest of a person; it is one of the options if the proximity to the border and other requirements are applicable.

51. By contrast, §287, which is part of the same scheme of enforcement, only allows warrantless arrests in narrow circumstances: if the officer sees the alien entering illegally, if the officer has probable cause to believe the alien is unlawfully present and likely to escape, or if the officer reasonably believes the alien committed a felony, none of which happened. *Matter of Mariscal-Hernandez*, 28 I&N Dec. 666 (BIA 2022), *Tejada-Mata v. INS*, 626 F. 2d 721, 725 (9th Cir. 1980).

52. Absent these particular circumstances, not all applicants for admission are subject to a warrantless arrest and mandatory detention.

53. The overbroad and sudden policy shift by DHS in the application of INA section 235(b), now is subjecting all noncitizens nationwide to mandatory detention and denying basic due process regardless of the person's proximity to the border, length of stay in the U.S. or lack of criminal history.

54. This is a significant change that occurred on July 8, 2025, when Immigrations and Customs Enforcement (ICE) implemented a new policy "Interim Guidance Regarding Detention Authority for Applicants for Admission." *See Todd Lyons Interim ICE Guidance Regarding Detention Authority for Applicants for Admission,"* July 8, 2025. Whereby they suddenly changed their application of immigration authority statutes to justify mandatory detention, switching their justification for mandatory detention, despite

the lack of proximity to the border, and significantly expanding the constructive interpretation of "applicants for admission" to 8 USC§1225, instead of 8 U.S.C.1226, which has been applied since 1996.

55. To further rubber stamp DHS' innovative interpretation of "applicants for admission", on September 5, 2025, the BIA decided the *Yajure Hurtado* case and significantly departed from the established agency interpretation of the law that had been followed since 1996 and had allowed for bond redetermination. *In re: Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). In the *Hurtado* decision, the BIA expanded their interpretation of arriving aliens and determined that immigration judges lack the authority to hear bond requests or grant bond to noncitizens who entered the United States without inspection and are now subject to mandatory detention. *Id.*

56. This new law and caselaw made any requests for bond a futile exercise and have forced mandatory detention of non-citizens nationwide. Including people like Petitioner.

57. A recent decision by the Western District of Texas analyzed a similar Writ of Habeas Corpus petitions and provided a significant list of cases that support Petitioner's request. *See Lopez Arevalo v. Ripa,* 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025):

> "In recent weeks, courts across the country have held that this new, expansive interpretation of mandatory detention under the INA is either incorrect or likely incorrect. *See Lopez-Campos v. Raycraft*, ___F. Supp. 3d ___, n.5, 2025 WL 2496379, at *8 n.5 (E.D. Mich. Aug. 29, 2025)(collecting twelve such decisions); see, e.g., *Jimenez v. FCI Berlin, Warden*, __F. Supp.3d __, __ & n.9, 2025 WL 2639390, at *10 & n.9 (D.N.H. Sept. 8, 2025). That includes courts in the Fifth Circuit. *Lopez Santos*, 2025 WL 2642278, at *5; *Kostak v. Trump*, No. 25-cv-1093, 2025 WL 2472136, at*3 (W.D. La. Aug. 27, 2025)"

58. Recently, in the case of *Loper Bright*, the Supreme Court finally ended the Chevron deference doctrine. (*Loper Bright Enterprises v. Raimondo*, 603 U.S.369; 144 S. Ct. 2244; 219 L.Ed. 2d 832 (2024)). This honorable court can now independently interpret

the statutes and is not bound to follow the BIA's sudden shift and new agency interpretation of the law regarding mandatory detention after the *Hurtado* decision. In particular, the *Loper Bright* decision explained that the agency interpretations can be used as persuasive to the courts, especially if based on specialized expertise or have been consistent over a long period. *Id.* The BIA's *Hurtado* new interpretation is quite the opposite and tries to undo precedent interpretation forged since 1996 and applicability of mandatory detention to any noncitizen detained in the interior of the United States, altering the "arriving alien" interpretation regardless of the time in the country or the proximity to the border. This swift change by the BIA agency interpretation stripping the Immigration Judges of the jurisdiction to set bond and allowing mandatory detention is so inconsistent with almost thirty years of BIA precedent that it should not pass muster as even persuasive authority.

59. Mr. Adrian Garcia Puente's circumstances qualify him under the purview of §236. He should not be considered an "arriving alien" because he was not apprehended at a port of entry or "arriving in" to the United States or "shortly after" crossing the border.

60. By contrast, Mr. Adrian Garcia Puente has been residing in Laredo, Texas for nearly 18 years. Because he was not an arriving alien, the government was precluded from charging his under an expedited removal process (§235(b)(1)), which supports our contention that this case is covered by §236(a).

The Arrest should have been performed based on a Warrant; Therefore, Petitioner is subject to Discretionary Detention Under §236

61. Petitioner was arrested inside the United States, at a checkpoint and apparently without a warrant. The only exceptions to the requirement of a warrant under INA§287(a), are

when (1) the officer sees the alien entering illegally; (2) the officer has probable cause to believe the alien is unlawfully present and likely to escape before a warrant can be obtained; or (3) the officer reasonably believes the alien committed a felony.

62. The "reason to believe" has been interpreted by the BIA as probable cause where warrantless arrests would be justified if there is probable cause that an alien is unlawfully present and is likely to escape. *Matter of Mariscal-Hernandez, 28 I&N Dec. 666 (BIA 2022).* In *Matter of Mariscal Hernandez* the BIA's analysis was that while generally a person in a vehicle may flee, the analysis must be fact-specific. In the *Mariscal Hernandez* case, the noncitizen was in a car that was stopped by law enforcement, he was cooperating; there was no reason to believe he would abscond before a warrant could be acquired, and the BIA determined that DHS should have sought a warrant.

63. In the case at bar, similarly the arrest should have been executed by a warrant, Petitioner was detained at the checkpoint, surrounded by Federal Border Patrol agents and was not going to abscond when he was asserting his right to travel, thus based on *Mariscal Hernandez* the detention falls under §236(a) and Petitioner should be entitled to release or a bond hearing.

64. In determining whether a civil detention violates a detainee's due process rights, the courts have applied a three-part test that was set forth in *Matthews v. Eldridge*, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976). Those factors are: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or

substitute procedural requirement would entail." *Matthews*, 424 U.S. at 335, 96 S.Ct. 893. "The essence of procedural due process is that a person risking a serious loss be given notice and an opportunity to be heard in a meaningful manner and at a meaningful time." M.S.L. v. Bostock, No. 25-cv-1204, 2025 WL 2430267, at *8 (D. Or. Aug.21, 2025) (citing Matthews, 424 U.S. at 348, 96 S.Ct. 893.)

65. Congressional History also supports Petitioners contention that he is eligible for bond. Analyzing the recent *Laken Riley Act* of 2025, (*LRA*), Congress expected and reaffirmed by it that most non-citizens present without admission qualified for bond. *See* Pub. L. No. 119-1§2, 139 Stat. 3, 3 (2025) (adding 8 U.S.C. §1226(c)(1)(E)). In the *LRA*, Congress reserved mandatory detention to a specific set of non-citizens with serious criminal acts. The new §236(c)(1)(E) is applicable when the non-citizen is inadmissible under §212(a)(6)(A), (6)(C) or (7) and has been arrested for, charged with, convicted of, or admitted to committing burglary, theft, larceny, assault of a law-enforcement officer, shoplifting, or a crime resulting in death or serious bodily injury. The fact that Congress required both inadmissibility plus specific criminal involvement reiterates that mandatory detention is not triggered by inadmissibility alone. Thus if §235(b) arguably mandated detention of all inadmissible noncitizens, then §236(c)(1)(E) would become superfluous, which will be contrary to the anti-surplusage cannon of law established by the Supreme Court. *Corley v. United States*, 556 U.S. 303 (2009).

66. Additional support for Congressional intent is the fact that mandatory detention in §235(b) is applicable "to an alien seeking admission," which should be construed based on its ordinary everyday meaning. *Antonin Scalia & Bryan A. Garner Reading Law: The Interpretation of Legal Texts* 69 (2012). Accordingly, "Seek" is an active verb, not a type

of status. Seek, Merriam-Webster, https://www.merriam-webster.com/dictionary/seek (defining "seek" as "to try to acquire or gain"). This is not superfluous language and must be taken into account interpreting Congress' intent.

67. In addition, the Supreme Court established that at the time that Congress adopts a new interpretation in contradiction to a long-standing administrative practice, the courts presume that the new provision harmonizes with well established practices. (*Monsalvo Velazquez v. Bondi*, No 23.-929, 2025 WL 1160894 (U.S. Apr. 22, 2025). Furthermore, since 1996, DHS has utilized §236(a) detaining inadmissible non-citizens and allowing bond hearings, so when Congress enacted the LRA it was under that established practice and in no way did Congress direct DHS to displace §236(a). Congress expressly did not eliminate bond eligibility by the *LRA*, as it differentiated to invoke mandatory detention *only* for those non-citizens with specified criminal histories, which does not apply to Petitioner.

68. Petitioner respectfully requests that this Honorable Court grant this Writ and issue an order for immediate release, as any additional days detained is a prolonged violation of due process.

(1) Reportedly, some immigration judges have disregarded Federal Writ of Habeas Orders and failed to provide a meaningful bond redetermination hearing, asserting detention authority under 8 U.S.C. §1225 and often leading to prolonged detention and ultimately removal on a fast-track detention docket.

69. Therefore, Petitioner respectfully requests an order of immediate release and if other securities are needed, or if necessary, with an ankle monitor should satisfy Respondent's interests and stop the daily violation of Petitioner's rights.

70. If any bond is necessary, Petitioner respectfully requests and reiterates that Petitioner is neither a danger to the community, nor a flight risk since he has a vested interest in remaining in the United States and obtaining his immigration status.

CLAIMS FOR RELIEF

COUNT ONE
VIOLATION OF FIFTH AMENDMENT RIGHT TO DUE PROCESS CONTINUED AND UNJUSTIFIED DETENTION

71. The allegations in the above paragraphs are realleged and incorporated herein.

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

73. The Due Process Clause of the Fifth Amendment to the U.S. Constitution provides that "[n]o person shall…be deprived of life, liberty or property without due process of law."

74. Mr. Adrian Garcia Puente has been in the country for approximately eighteen years and is entitled to the Due Process Class protections against deprivation of liberty and property. *See Zadvydas,* 533 U.S. at 693 ('[T]the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.") Any deprivation of this fundamental liberty interest must be accompanied by adequate procedural protections, and in addition by a "sufficiently strong special justification" to outweigh the significant deprivation of liberty. *Id.* At 690.

75. Respondents have deprived and continue to deprive Mr. Adrian Garcia Puente of his liberty interest protected by the Fifth Amendment by detaining him since September 13, 2025.

76. Additionally, Mr. Adrian Garcia Puente's wrongful mandatory detention is improperly precluding him of the right to a bond hearing. Similarly to a person accused in a criminal

case, a habeas corpus is proper in the case at bar. *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).

77. Respondents' actions in detaining Mr. Adrian Garcia Puente and prolonging his detention without an opportunity for a bond without any legal justification violate the Fifth Amendment.

COUNT TWO
FIFTH AMENDMENT-DUE PROCESS
DENIAL OF OPPORTUNITY TO CONTEST ERRONEOUS INCLUSION IN MANDATORY DETENTION CATEGORY and RE-ARREST

78. Petitioner re-alleges and incorporates by reference paragraphs 1-77 above.

79. Mr. Adrian Garcia Puente has a vested interest in preventing his removal because he qualifies for Cancellation of Removal relief. He is entitled to pursue this type of relief without being detained and showing he is not a danger to the community of a flight risk.

80. By statute and regulation, as interpreted by the Board of Immigration Appeals (BIA), ICE has the authority to re-arrest a noncitizen and revoke their bond, only when there has been a change in circumstances since the individual's release. 8 U.S.C. §1226(b);8 C.F.R. §236.1(c)(9) *Matter of Sugay,* 17 I&N Dec. 647640(BIA 1981). Subsequent decisions reiterate the government's further clarification in litigation, that any change in circumstances must be "material." *Saravia v. Barr*, 280 F. Supp. 3d1168, 1197 (N.D. Cal. 2017), aff'd sub nom. *Saravia for A.H. v. Sessions*, 905 F. 3d 1137 (9th Cir. 2018) (emphasis added). Individuals released from incarceration have a well-established liberty interest in their freedom, proscribed by the Due Process Clause.

81. For all of the above stated reasons, Respondents' actions detaining and prolonging the detention of Petitioner without a meaningful opportunity to be heard violate his Procedural Due Process rights under the Fifth Amendment.

COUNT THREE
ADMINISTRATIVE PROCEDURE ACT

82. Petitioner re-alleges and incorporates by reference paragraphs 1-81 above.
83. Respondents' continued detention of petitioner and precluding him from a bond re-determination violate the INA, Administrative Procedures Act (APA), and U.S. Constitution.
84. Petitioner has been precluded of the opportunity to be free and able to assist in his defense of this "civil matter" by procuring the necessary evidence of hardship and good moral character to pursue a Cancellation of Removal case. The prolonged detention without the opportunity to assist in the preparation of evidence, without being able to return to his family and the governments' mandatory detention policy are a continuous violation to his procedural and substantive due process rights and will subject him to a fast track removal without evidence on his behalf.
85. DHS and BIA's recent policy and interpretation respectively, have in essence expanded mandatory detention to those found in the interior U.S. despite not being arriving aliens. This new interpretation has railroaded Petitioner into a fast-track removal hearing, without the opportunity to gather more evidence for his case and having to defend against this absurd mandatory detention interpretation while his detention is prolonged.
86. Respondent's recent changes and policy guidelines of mandatory detention interpretation have improperly altered the substantive rules and process regarding mandatory custody

without the required notice-and-comment period and should be in violation of the INA and its regulations, as well as a violation of the APA. Under the APA, this Court may hold unlawful and set aside an agency action that is "contrary to constitutional right, power, privilege or immunity." 5 U.S.C. §706(2)(B). The regulations at 8 C.F.R. s§1003.19(h)(1)(B) and 1003.19(h)(2)(B) precluding review of DHS custody decisions 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 also *ultra vires* as it exceeds the authority granted to ICE by Congress at 8 U.S.C. §1226(a).

COUNT FOUR

SUSPENSION CLAUSE CLAIM

87. Petitioner re-alleges and incorporates by reference paragraphs 1-86 above.

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

89. In order 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. Adrian Garcia Puente satisfies these requirements and therefore may invoke the Suspension Clause.

90. First, Mr. Adrian Garcia Puente is not a U.S. Citizen or resident, he has lived here for approximately eighteen years, and qualifies under the INA for Cancellation of Removal, he does not have any criminal record, he has lived in the United States over ten continuous yeas, he is able to provide proof of good moral character and is able to prove that his U.S. citizen children will suffer exceptional and extremely unusual hardship if he were removed to Mexico.

91. The second prong is met in that Petitioner was apprehended by DHS and remains detained in the United States.

92. Petitioner contends that there are no serious, practical obstacles to resolving the present matter. This Court has jurisdiction to decide whether Mr. Adrian Garcia Puente is entitled to the writ.

93. Given the current DHS new policy on mandatory detention and the BIA's reiteration of that recent and abrupt change in interpretation as stated above, there is no adequate alternative to a Habeas petition.

COUNT FIVE

TRO and INJUNCTIVE RELIEF

94. Petitioner re-alleges and incorporates herein by reference each and every allegation contained in paragraphs 1-93 of this Petition.

95. This Honorable 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. Depending on the evidence obtained, Petitioner has a substantial likelihood to prevail on the merits, his prolonged detention has been and continues to cause irreparable injury if an injunction is not granted, Petitioner's injury outweighs any potential harm to Respondents, and Petitioner contends based on his circumstances that granting a preliminary injunction will be in the public interest. Respondents' actions have caused, and his daily detention continues to cause irreparable harm to Petitioner, which warrants immediate relief.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

(1) Assume jurisdiction over this matter;

(2) Declare that ICE's September 13, 2025, apprehension and detention of Mr. Adrian Garcia Puente was an unlawful exercise of authority as the ICE agent failed to present any evidence that he poses a danger to the community or a flight risk to merit an arrest under *Matter of Guerra,* 24 I&N DEC. 37 (BIA 2006);

(3) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days.

(4) Order Respondents to file with this court a complete copy of Petitioner's A-file from the Department of Justice and the Department of Homeland Security;

(5) Enjoin ICE from transferring Mr. Adrian Garcia Puente outside of the Southern District of Texas while this matter is pending;

(6) Enjoin Respondents from detaining Petitioner under the asserted detention authority of 8 U.S.C. §1225.

(7) Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment;

(8) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately, or in the alternative, schedule an immediate bond hearing before an immigration judge;

(9) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, as amended, 28 U.S.C. §2412; and on any other basis justified under law; (*See Daley v. Ceja*, No. 24-1191 (10th Circuit, 2025) and

(10) Order Respondents to provide a status report within seven days of the order.

(11) Grant any further relief this Court deems just and proper.

Respectfully submitted,

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Dated: November 24, 2025

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

I represent Petitioner, Adrian Garcia Puente, 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 24 day of November, 2025.

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