UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

JESUS SANCHEZ ROMERO,

Petitioner,

v.

KEVIN RAYCRAFT, in his official capacity as Acting Field Office Director of Enforcement and Removal Operations, Detroit Field Office, Immigration and Customs Enforcement; Kristi NOEM, in her official capacity as Secretary, U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; Pamela BONDI, in her official capacity as U.S. Attorney General; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW,

Respondents.

Case No.

Hon.

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. This petition arises from the recent Board of Immigration Appeals decisions, specifically *Matter of Yajure Hurtado,* 29 I&N Dec. 216 (2025) and the U.S. government's new policy - which contradicts both the plain language of the Immigration and Nationality Act (INA) and decades of agency practice - of erroneously interpreting the INA to mandate detention without the possibility of bond for noncitizens who entered the United States without inspection, regardless of any positive equities in their case.

2. The drastic changes in immigration law and policy have resulted in the unlawful detention of countless noncitizens nationwide. Dozens of habeas corpus petitions for their release have been filed in jurisdictions across the country (over 175 positive decisions nationwide including at least 18 in the Eastern District of Michigan). Virtually every merits decision in those cases has found for the petitioners, either granting them a bond hearing or ordering their immediate release.

3. Petitioner Jesus Sanchez Romero has been unlawfully detained for over two months – since August 25, 2025 – without the possibility of bond in furtherance of this policy. Petitioner came to the United States 27 years ago and has lived here ever since.

4. Petitioner was taken into immigration custody. Respondents placed Petitioner in civil immigration removal proceedings, alleging that he had entered the United States without inspection. 8 U.S.C. §1182(a)(6)(A)(i).

5. Petitioner is currently in the physical custody of Respondents at North Lake Processing Center in Baldwin, Michigan, which falls under the purview of the Detroit Field Office of Immigration and Customs Enforcement (ICE), which has responsibility for immigration detention centers in Michigan and Ohio.

6. Under 8 U.S.C. §1226(a), which allows for release on conditional parole or bond, Petitioner is entitled to a bond determination. That statute expressly applies to people who, like Petitioner, are residing in the United States but are charged as inadmissible for having initially entered the United States without inspection. In accordance with 8 U.S.C. §1226(a), the Department of Homeland Security (DHS) and Executive Office of Immigration Review (EOIR) have for decades provided bond determinations and bond hearings to people like Petitioner who have been living in the United States but allegedly entered without inspection.

7. However, pursuant to a new governmental policy announced on July 8, 2025,[1] Petitioner is now being unlawfully detained without bond. The new policy

[1] ICE Memo: Interim Guidance Regarding Detention Authority for Applicants for Admission (Jul. 8, 2025), https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission [https://perma.cc/8SP7-TDDD].

instructs all ICE employees to no longer apply 8 U.S.C. §1226(a) to people charged with being inadmissible under §1182(a)(6)(A)(i) - i.e., those who initially entered the United States without inspection. Instead, under the new policy, ICE employees are to subject people like Petitioner to mandatory detention without bond under §1225(b)(2)(A)—a provision that has historically been applied only to recent arrivals at the U.S. border—no matter how long they have resided in the United States.

8. Detaining Petitioner without bond is plainly contrary to the statutory framework of the INA and contrary to both agency regulations and decades of consistent agency practice applying §1226(a) to people like Petitioner. It also violates Petitioner's right to due process by depriving him of his liberty without any consideration of whether such a deprivation is warranted.

9. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be immediately released from custody unless Respondents provide him a bond hearing under §1226(a) within seven days.

10. Petitioner is not challenging any discretionary denial of bond; he is challenging the legal determination that he is not eligible for bond under §1226(a) in the first place.

JURISDICTION

11. Petitioner Jesus Sanchez Romero is in the physical custody of Respondents, detained at the North Lake Processing Center in Baldwin, Michigan. He has been detained there since August 25, 2025.

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

13. 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

14. Venue is proper in the Eastern District of Michigan under 28 U.S.C. §2241 and 28 U.S.C. §1391. Petitioner is detained in an immigration detention facility at the direction of, and is in the immediate custody of, Respondent Kevin Raycraft. *See Roman v. Ashcroft*, 340 F.3d 314, 320-21 (6th Cir. 2003).

15. 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 and relevant facts occurred in the Eastern District.

REQUIREMENTS OF 28 U.S.C. §2243

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

17. 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

18. Petitioner Jesus Sanchez-Romero is a citizen of Mexico who has resided in the United States since 1998. He has been in immigration detention since August 25, 2025, and is currently detained at the North Lake Processing Center. After taking custody of Mr. Sanchez-Romero, ICE did not set bond.

19. Respondent Kevin Raycraft is the Acting Director of the Detroit Field Office of ICE's Enforcement and Removal Operations division. As such, Acting

Director Raycraft is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity.

20. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the 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.

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

22. 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 are component agencies. She is sued in her official capacity.

23. 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.

FACTS

24. Petitioner Jesus Sanchez-Romero came to the United States in 1998 at age 15 and has lived here continuously since.

25. Mr. Sanchez-Romero, who is now forty-two years old, has three children, ages 16, 14, 10, who are all U.S. citizens. The family lives in Lincoln Park, Michigan.

26. On April 12, 2010, Petitioner was on his way to work when he was stopped by Immigration and Customs Enforcement ("ICE") officials. He was taken to the ICE Detroit Field Office, where he was processed and issued a Notice to Appear.

27. Once in their custody and after having reviewed his file and determining that Petitioner was neither a danger to the community nor a flight risk, ICE authorized a $3,000 bond for his release. The bond was paid, and Petitioner was released on April 20, 2010. **(Exhibit A).**

28. ICE's previous placement of a bond for Petitioner's release in 2010 evidences its treatment of his detention as being governed by 8 U.S.C. §1226(a) and not 8 U.S.C. §1225(b)(2).

29. Petitioner filed his application for cancellation of removal with the Detroit Immigration Court on November 17, 2010.

30. Petitioner was in active removal proceedings and attended multiple hearings at the Detroit Immigration Court until March 1, 2016. On that date, the Immigration Judge administratively closed his case based on a motion of the

Department of Homeland Security stating that it was in their "best interest that [Petitioner's] removal proceedings be administratively closed." **(Exhibit B).**

31. On July 16, 2025, Petitioner's case was re-calendared.

32. In August 2025, Mr. Sanchez-Romero was stopped by ICE agents a few blocks from his home. After he was fingerprinted, the officers initially found no reason to detain him but then took him into custody. He is now detained at the North Lake Correction Center in Baldwin, Michigan.

33. ICE did not conduct a custody re-determination and chose to continue Mr. Sanchez-Romero's detention without an opportunity to post any additional bond or be released on other conditions.

34. Petitioner respectfully submits that he never violated any conditions on his bond from 2010.

35. Mr. Sanchez-Romero is clearly neither a flight risk nor a danger to the community, as demonstrated by the fact:

- He came to the United States as a child and has lived here for 27 years.
- He lives with and cares for his three U.S. citizen children.
- He has owned his own home for ten years.
- He is involved in his church and community.
- ICE already determined that he was neither a flight risk nor a danger to the community in 2010 when the Detroit Field Office issued Petitioner a bond.

36. Without relief from this court, Mr. Sanchez-Romero faces the prospect of months, or even years, in immigration custody, separated from his family and community. Mr. Sanchez-Romero, who has been working with an immigration attorney for many years, has strong claims for immigration relief based on his family ties and his long residence in the United States.

37. Petitioner's immigration counsel precluded a bond hearing, citing Detroit Immigration Court judges' determination that those who allegedly entered without inspection are subject to mandatory detention under 8 U.S.C. §1225(b)(2).

LEGAL FRAMEWORK

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

39. First, 8 U.S.C. §1226 authorizes the detention of noncitizens who are in removal proceedings. *See* 8 U.S.C. §1229a. *See also Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018) (explaining that §1226(a) applies to those who are "already in the country" and are detained "pending the outcome of removal proceedings"). Under §1226(a), individuals who are taken into immigration custody pending a decision on whether they are to be removed can be detained but are generally entitled to seek release on bond.[2] The bond may be set by ICE itself as part of an initial

[2] Section §1226 contains an exception for noncitizens who have been arrested, charged with, or convicted of certain crimes, who are subject to mandatory detention without bond. 8 U.S.C. §1226(c). That exception does not apply to Petitioner here.

custody determination, *see* 8 C.F.R. §1236.1(c)(8), and/or the individual may seek a bond hearing in immigration court at the outset of their detention, *see* 8 C.F.R. §§1003.19(a), 1236.1(d). Section 1226(a) is the statute that, for decades, has been applied to people like Petitioner who have been living in the United States and are charged with inadmissibility under §1182(a)(6)(A)(i).

40. Second, the INA provides for mandatory detention of certain recently arrived noncitizens, namely those subject to expedited removal under 8 U.S.C. §1225(b)(1), and other recent arrivals seeking admission under §1225(b)(2). *See Jennings*, 583 U.S. at 287, 289 (explaining that §1225(b)(2)'s mandatory detention scheme applies "at the Nation's borders and ports of entry" to noncitizens "seeking admission into the United States."). Section 1225(b)(2) is the statute that Respondents have suddenly decided is applicable to people like Petitioner.

41. Third, the INA also provides for detention of noncitizens who have already been ordered removed, *see* 8 U.S.C. §1231. Section 1231 is not relevant here.

42. The Administrative Procedures Act (APA) prescribes Courts a deferential standard of review over agency actions that have failed to consider all relevant factors, were unable to provide an adequate explanation for their decision or have departed from prior policies and procedures without justification. *See* 5

U.S.C. §706(2)(A); *see also Motor Vehicle Mfrs. Ass'n v. State Farm Mutual Automobile Ins. Co.*, 463 U.S. 29 (1983).

43. This case challenges Respondents' erroneous decision that Petitioner is subject to mandatory detention without bond under §1225(b)(2), rather than being bond-eligible under §1226(a).

44. 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, 582–583, 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).

45. Following the 1996 enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not 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. 10,312, 10,323 (Mar. 6, 1997) (explaining that "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination.").

46. Thus, in the three decades that followed, people who entered without inspection and were subsequently placed in removal proceedings received bond hearings if ICE chose to detain them, unless their criminal history rendered them ineligible. That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an 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)).

47. However, on July 8, 2025, ICE, "in coordination with" the Department of Justice, suddenly announced a new governmental policy that rejected the well-established understanding of the statutory framework and reversed decades of agency practice.

48. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission," claims that all persons who entered the United States without inspection are subject to mandatory detention without bond 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 for decades.

49. In decision after decision, federal courts—both nationwide and here in the Eastern District of Michigan—have rejected Respondents' sudden reinter-

pretation of the statutory scheme and have instead held that §1226(a), not §1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. *See, e.g., Rodriguez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. Apr. 24, 2025); *Gomes v. Hyde*, No. 25-CV-11571, 2025 WL 1869299 (D. Mass. July 7, 2025); *Martinez v. Hyde*, --- F. Supp. 3d. ---, 2025 WL 2084238 (D. Mass. July 24, 2025); Order, *Bautista v. Santacruz Jr.*, No. 25-CV-1873 (C.D. Cal. July 28, 2025), Dkt. 14;[3] *Rosado v. Figueroa et al.*, No. 25-CV-02157, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025); *Lopez Benitez v. Francis*, --- F. Supp. 3d. ---, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); Order, *Gonzalez v. Noem*, 25-CV-2054 (C.D. Cal. Aug. 13, 2025), Dkt. 12; *Dos Santos v. Noem*, No. 25-CV-12052, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Maldonado v. Olson*, --- F. Supp. 3d. ---, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 25-CV-01789-ODW, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, --- F. Supp. 3d. ---, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce,* No. 25 Civ. 6373, 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Leal-Hernandez v. Noem*, No. 25-CV-02428, 2025 WL 2430025 (D. Md. Aug. 24, 2025); Order, *Ruben Benitez et al. v. Noem et al.*, 25-CV-2190 (C.D. Cal. Aug. 26, 2025), Dkt. 11; *Larysa Kostak v.*

[3] *Bautista et al. v. Santacruz Jr. et al.* is also a putative class action seeking only declaratory relief for the class. The proposed class, which would include Petitioner, has not yet been certified. Ultimately, however, Petitioner would still require a writ of habeas corpus from this Court even if he obtains declaratory relief in *Bautista*.

Trump et al., 25-CV-1093 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051, 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Diaz Diaz v. Mattivelo*, No. 25-CV-12226, 2025 WL 2457610 (D. Mass. Aug. 27, 2025); *Francisco T. v. Bondi*, No. 25-CV-03219, 2025 WL 2629839 (D. Minn. Aug. 29, 2025); *Lopez-Campos v. Raycraft*, --- F.Supp.3d. ---, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Garcia v. Noem*, No. 25-CV-02180, 2025 WL 2549431 (S.D. Ca. Sept. 3, 2025); *Hernandez Nieves v. Kaiser*, No. 25-CV-06921, 2025 WL 2533110 (N.D. Cal., Sept. 3, 2025); *Doe v. Moniz*, No. 25-CV-12094, 2025 WL 2576819 (D. Mass. Sept. 5, 2025); *Jimenez v. FCI Berlin, Warden*, No. 25-CV-326, 2025 WL 2639390 (D.N.H. Sept. 8, 2025); *Mosqueda v. Noem*, No. 25-CV-02304, 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Hinestroza v. Kaiser*, No. 25-CV-07559, 2025 WL 2606983 (N.D. Cal. Sept. 9, 2025); *Sampiao v. Hyde*, No. 25-CV-11981, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Guzman v. Andrews*, No. 25-CV-01015, 2025 WL 2617256 (E.D. Cal. Sept. 9, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Lopez Santos v. Noem*, No. 25-CV-01193, 2025 WL 2642278 (W.D. La. Sept. 11, 2025); *Salcedo Aceros v. Polly Kaiser et al.*, No. 25-CV-5624, 2025 WL 2637503 (N.D. Cal. Sept. 12, 2025); Order, *Lamidi v. FCI Berlin, Warden*, No. 25-CV-297 (D.N.H. Sept. 15, 2025), Dkt. 14; *Garcia Cortes, v. Noem et al.*, No. 25-CV-02677, 2025 WL 2652880 (D. Colo. Sept. 16, 2025); *Maldonado Vazquez v. Feeley et al.*, No. 25-CV-01542, 2025 WL 2676082 (D. Nev.

Sept. 17, 2025); *Velasquez Salazar v. Dedos et al.*, No. 25-CV-00835, 2025 WL 2676729 (D.N.M. Sept. 17, 2025); *Hasan v. Crawford*, No. 25-CV-1408, 2025 WL 2682255 (E.D. Va. Sept. 19, 2025); *Yumbillo v. Stamper*, No. 25-CV-00479, 2025 WL 2688160 (D. Me. Sept. 19, 2025); *Beltran Barrera v. Tindall*, No. 25-CV-541, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Chogllo Chafla v. Scott*, No. 25-CV-00437, 2025 WL 2688541 (D. Me. Sept. 21, 2025); *Giron Reyes v. Lyons*, No. 25-CV-4048, 2025 WL 2712427 (N.D. Iowa Sept. 23, 2025); *Brito Barrajas v. Noem et al.*, No. 25-CV-00322, 2025 WL 2717650 (S.D. Iowa Sept. 23, 2025); *Lepe v. Andrews*, No. 25-CV-01163, 2025 WL 2716910 (E.D. Cal. Sept. 23, 2025); *Hernandez Lopez v. Hardin*, No. 25-CV-830, 2025 WL 2732717 (M.D. Fla. Sept. 25, 2025); *Valencia Zapata v. Kaiser*, No. 25-CV-07492, 2025 WL 2741654 (N.D. Cal. Sept. 26, 2025); *Zumba v. Noem*, No. 25-CV-14626, 2025 WL 2753496 (D.N.J. Sept. 26, 2025); *Tocagon v. Moniz*, No. 25-CV-12453, 2025 WL 2778023 (D. Mass. Sept. 29, 2025); *Romero-Nolasco v. McDonald*, No. 25-CV-12492, 2025 WL 2778036 (D. Mass. Sept. 29, 2025); *J.U. v. Maldonado*, No. 25-CV-04836, 2025 WL 2772765 (E.D.N.Y. Sept. 29, 2025); *Barrios v. Shepley*, No. 25-CV-00406, 2025 WL 2772579 (D. Me. Sept. 29, 2025); *Quispe-Ardiles v. Noem*, No. 25-CV-01382, 2025 WL 2783800 (E.D. Va. Sept. 30, 2025); *Rodriguez v. Bostock*, No. 25-CV-05240, 2025 WL 2782499 (W.D. Wash. Sept. 30, 2025); Sanchez Alvarez v. Noem et al., No. 1:25-CV-1090, 2025 WL 2942648 (W.D. Mich. Oct. 17, 2025);

Contreras-Cervantes et al. v. Raycraft, et al, No. 2:25-CV-13073, 2025 WL 2952796 (E.D. Mich. Oct. 17, 2025).[4]

50. This list is undoubtedly incomplete. As the media has reported, the government's new no-bond policy has "led to dozens of recent rulings from gobsmacked judges who say the administration has violated the law and due process rights …. The pile up of decisions is growing daily." Kyle Cheney and Myah Ward, *Trump's New Detention Policy Targets Millions of Immigrants. Judges Keep Saying It's Illegal*, Politico (Sept. 20, 2025, at 4:00 PM ET), https://www.politico.com/news/2025/09/20/ice-detention-immigration-policy-00573850.

51. In recent months, the Eastern District of Michigan has twice rejected Respondents' interpretation of the INA and granted writs of habeas corpus to detained noncitizens to whom Respondents denied a bond hearing. On August 29, 2025, Judge Brandy McMillion granted a writ of habeas corpus to an identically situated petitioner, concluding that "There can be no genuine dispute that Section 1226(a), and not Section 1225(b)(2)(A), applies to a noncitizen who has resided in this country for . . . years and was already within the United States when

[4] *But see Chavez v. Noem*, No. 25-CV-02325, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025) (denying request for *ex parte* temporary restraining order on grounds that the petitioners' motion did not raise "serious questions going to the merits."); *Vargas Lopez v. Trump*, No. 25-CV-526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025) (denying habeas petition primarily due to "the mistakes in the Petition, including the failure of Vargas Lopez to attach certain referenced exhibits.").

apprehended and arrested during a traffic stop, and not upon arrival at the border." *Lopez-Campos*, --- F.Supp.3d. ---, 2025 WL 2496379, at *8. And on September 9, 2025, Judge Robert White issued the same relief to another identically situated petitioner, reasoning that "the legislative history and agency guidance . . . in conjunction with the statutory interpretation" clearly entitles the petitioner to a bond hearing under §1226(a). *Pizarro Reyes*, No. 25-CV-12546, 2025 WL 2609425, at *8.

52. On September 5, 2025, the BIA issued a precedential decision that rejected the overwhelming consensus of the federal courts. *Matter of Yajure Hurtado*, *supra.* That decision held that all noncitizens who entered the United States without admission or parole are ineligible for bond hearings before an IJ.

53. The *Yajure Hurtado* decision—like the government policy it seeks to uphold—defies the INA. As Judge Robert White wrote—after noting that federal district courts are not bound by agency interpretations of statutes—the BIA's reasoning is unpersuasive and "at odds with every District Court that has been confronted with the same question of statutory interpretation." *Pizarro Reyes*, 2025 WL 2609425, at *7. *See also Sampiao*, 2025 WL 2607924, at *8 n.11 (noting court's disagreement with BIA's analysis in *Yajure Hurtado*); *Beltran Barrera*, No. 25-CV-541, 2025 WL 2690565, at *5 (same); *Chogllo Chafla*, No. 25-CV-00437, 2025 WL 2688541, at *7-8 (same).

54. As court after court has explained, the plain text of the statutory provisions demonstrates that §1226(a), not §1225(b), applies to people like Petitioner.

55. 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]."

56. 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*, 779 F. Supp. 3d at 1256-57 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

57. 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.

58. 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). *See Jennings*, 583 U.S. at 287 (explaining 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.").

59. Accordingly, the mandatory detention provision of §1225(b)(2) does not apply to people who have already entered and were long residing in the United States at the time they were apprehended by immigration authorities and detained. Because §1226(a), not §1225(b), is the applicable statute, Petitioner's detention without eligibility for bond is unlawful.

60. Petitioner seeks relief from this Court because any months-long appeal to the BIA of an IJ's decision denying bond would be futile. A new request for a bond hearing is likewise futile. First, the agency's position is clear: both IJs and future panels of the BIA must follow the *Yajure Hurtado* decision. Further, the new governmental policy was issued "in coordination with DOJ," which oversees the immigration courts, including the BIA—up to and including the ability of the Attorney General to modify or overrule decisions of the BIA, *see* 8 C.F.R. §1003.1(h). It is therefore unsurprising that the BIA has (erroneously) held that persons like Petitioner are subject to mandatory detention under §1225(b)(2)(A), rather than being bond-eligible under §1226(a). Moreover, in the numerous identical

habeas corpus petitions that have been filed nationwide, EOIR and the Attorney General are often respondents and have consistently affirmed via briefing and oral argument that individuals like Petitioner are applicants for admission and subject to detention under § 1225(b)(2)(A). *See*, *e.g.*, Resp. to Pet., *Lopez Campos v. Raycraft*, No. 25-CV-12546 (E.D. Mich. Aug. 9, 2025), Dkt. 9; Resp. to Pet., *Pizarro Reyes v. Raycraft*, No. 25-CV-12546 (E.D. Mich. Aug. 27, 2025), Dkt. 4.

61. Second, by the time the BIA could even issue an appeal—a process that typically takes at least six months, *Rodriguez*, 779 F. Supp. 3d at 1245, and in many cases, roughly a year, *id.*—the harm of Petitioner's unlawful detention will be impossible to remediate. Nor will the downstream effects of continued detention be remediable: Petitioner's family and community will be left with a dedicated father, husband, breadwinner, and active Catholic church parishioner.

62. Third, neither IJs nor the BIA has the authority to decide constitutional claims. *See Sterkaj v. Gonzales*, 439 F.3d 273, 279 (6th Cir. 2006). Here, Petitioner claims not only that Respondents are unlawfully detaining him without bond hearings under an inapplicable statute, but also that such detention violates Petitioner's constitutional right to due process if the government seeks to deprive him of his liberty.

CLAIMS FOR RELIEF

COUNT I

Violation of the INA

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

64. Respondents are unlawfully detaining Petitioner without bond pursuant to the mandatory detention provision at 8 U.S.C. §1225(b)(2).

65. Section 1225(b)(2) does not apply to Petitioner, who previously entered the country and has long been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents.

66. Instead, Petitioner should be subject to the detention provisions of §1226(a) and are therefore entitled to a custody determination by ICE, and if custody is continued, to a custody redetermination (i.e., a bond hearing) by an immigration judge.

67. Respondents' application of 8 U.S.C. §1225(b)(2) to Petitioner results in Petitioner's unlawful detention without the opportunity for a bond hearing and violates the INA.

COUNT II

Violation of the Bond Regulations

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

69. 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.

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

71. 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

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

73. 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).

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

75. The government's detention of Petitioner without an opportunity for a custody determination or bond hearing to decide whether he is a flight risk or danger violates Petitioner's right to due process.

COUNT VI

Arbitrary and Capricious Agency Action Under the Administrative Procedure Act, 5 U.S.C. §706(2)(A)

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

77. Petitioner realleges and incorporates by reference the paragraphs above. Courts must "hold unlawful and set aside agency action" that is "arbitrary,

capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. §706(2)(A).

78. ICE has deviated from its own policy in continuing to detain Petitioner after he was previously released on bond on the grounds that Petitioner was not a priority, without determining whether exceptional circumstances warrant his continued detention. This is arbitrary, capricious, and contrary to law in violation of the APA.

79. As a remedy, this Court should conduct its own review of Petitioner's custody or, at least, order ICE to review Petitioner's custody under the standard articulated in ICE policy.

PRAYER FOR RELIEF

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

a. Assume jurisdiction over this matter;

b. Issue a writ of habeas corpus requiring that Respondents release Petitioner from custody or, in the alternative, provide Petitioner with a bond hearing pursuant to 8 U.S.C. §1226(a) within 7 days;

c. Enjoin Respondents from transferring Petitioner from the jurisdiction of this District pending these proceedings;

d. Set aside the agency action on the grounds that their policy and detention of Petitioner is arbitrary and capricious;

e. Declare that 8 U.S.C. §1226(a)—and not 8 U.S.C. §1225(b)(2)(A) —is the appropriate statutory provision that governs Petitioner's detention and eligibility for bond because Petitioner is not a recent arrival "seeking admission" to the United States, and instead was already residing in the United States when apprehended and charged as inadmissible for having allegedly entered the United States without inspection;

f. Award Petitioner 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

g. Grant any other and further relief that this Court deems just and proper.

Dated: November 11, 2025

Respectfully submitted,

/s/ Sufen Hilf
Counsel for Petitioner
Hilf & Hilf, PLC
3155 W Big Beaver Road, Suite 123
Troy, MI 48084
Ph: (248) 792-2590
Fax: (248) 885-8996
sufen@hilfandhilf.com