

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

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**FERNANDO** )  
**RODRIGUEZ LARA** )  
) )  
**Petitioner-Plaintiff,** )  
) )  
**v.** )

**PAMELA JO BONDI,** )  
**United States Attorney General;** )

**KRISTI LYNN NOEM,** )  
**Secretary of the United States** )  
**Department of Homeland Security;** )

**TODD M. LYONS,** )  
**Acting Director of United States** )  
**Immigration and Customs Enforcement;** )

**SYLVESTER M. ORTEGA,** )  
**Field Office** )  
**Director for Detention and Removal,** )  
**U.S. Immigration and Customs** )  
**Enforcement** )

**BOBBY THOMPSON Warden,** )  
**South Texas Detention Center** )

**UNITED STATES DEPARTMENT** )  
**OF HOMELAND SECURITY;** )

**Respondents-Defendants.** )

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Civ. No. 5:25-cv-1581

## INTRODUCTION

This petition is brought under 28 U.S.C. § 2241 and 8 U.S.C. § 1226(a). Section 2241 gives this Court authority to review the lawfulness of federal custody; § 1226(a) is the immigration statute that governs the arrest, detention, and release of noncitizens who are already inside the United States and placed into ordinary removal proceedings under 8 U.S.C. § 1229a. That is the statutory box Congress put Petitioner in, and that is the box DHS itself used for more than a decade.

FERNANDO RODRIGUEZ LARA (“Petitioner”) was taken into DHS custody in 2013. DHS served him with a Notice to Appear (“NTA”) that placed him in standard § 1229a removal proceedings before the San Antonio Immigration Court. At the same time, DHS arrested him on a warrant that expressly identified “section 236 of the Immigration and Nationality Act” (codified at 8 U.S.C. § 1226) as the detention authority. ICE then issued a Notice of Custody Determination and an Order of Release on Recognizance that again invoked § 236 and released him “in accordance with section 236 of the Immigration and Nationality Act” into the community. See Pet. Ex. 1 (Petitioner’s Release Documents – 2013).

For years thereafter, Petitioner lived openly in San Antonio with his U.S.-citizen family, appeared at ICE check-ins as directed, and complied with all conditions. Every formal act of the government—the NTA, the warrant, the custody determination, and the release order—treated him as a § 1226(a) detainee in § 1229a proceedings, i.e., as someone “already in the country” whose custody is discretionary and bond-eligible. The record is one-way traffic on that point: this has always been a § 1226(a) case, with the corresponding right to seek bond.

On November 3, 2025, Petitioner again did what the government told him to do: he appeared for a scheduled check-in at the ICE office in San Antonio. Nothing about his conduct, his proceedings, or the charges had changed. What had changed was the legal framework ICE and

the immigration courts now claim to be bound by. In July 2025, ICE issued “interim guidance” on “detention authority for applicants for admission,” and in September 2025 the Board of Immigration Appeals decided *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). See Pet. Ex. 2 (ICE Memo). In the wake of those actions, immigration judges have been instructed to treat noncitizens in Petitioner’s posture—long-time interior residents, already in § 1229a proceedings—as “applicants for admission” governed by 8 U.S.C. § 1225(b)(2)(A), and on that basis alone to disclaim bond jurisdiction.

That is what happened here. Petitioner was arrested at the check-in, transported to the South Texas ICE Detention Complex, and has been held since with no way to ask any neutral decisionmaker for bond—not because Congress removed that process, and not because any new facts were found about him, but because the agency now classifies him, as a matter of law, as a § 1225(b)(2)(A) “applicant for admission.” Under that label, ICE and the immigration court take the position that no bond hearing is available at all.

But Congress did not write a statute that permits this midstream switch. It drew a bright line between two detention schemes: § 1225 for inspection-stage “applicants for admission” at or near the border, and § 1226 for noncitizens already present in the United States and placed in § 1229a removal proceedings. Petitioner is plainly on the § 1226 side of that line, and the government’s own paperwork—its warrants, custody decisions, and release orders—confirms it. The problem here is not that someone has uttered the words “§ 1225” or “applicant for admission” in the abstract; the problem is that this new label is being used to wipe out the bond-hearing regime that § 1226(a) otherwise provides. Petitioner is being held today as if he were a recent border arrival detained under § 1225(b)(2), even though the statute, the record, and his long residence in this country say otherwise.

Petitioner does not ask this Court to set aside his removal proceedings or to block the government from pursuing removal in the ordinary course. He challenges only the present basis and conditions of his confinement: the midstream reclassification of him as a § 1225(b)(2)(A) “applicant for admission” and the resulting denial of any bond hearing before a neutral adjudicator. He asks the Court to enforce the statutory line Congress actually drew, hold that his detention is governed by § 1226(a), and restore him to the bond-eligible custody regime that the government itself applied to him for more than a decade.

### **CUSTODY**

1. Petitioner is in the physical custody of Respondent SYLVESTER M. ORTEGA, Field Office Director for Detention and Removal, ICE, United States Department of Homeland Security (“DHS”), and Respondent BOBBY THOMPSON, Warden of South Texas ICE Detention Complex in Pearsall, Texas. At the time of filing this petition, Petitioner is detained at the South Texas ICE Detention Complex, 566 Veteran Drive, Pearsall, Texas 78061. The Geo Group contracts with the DHS to detain Respondents such as Petitioner. Petitioner is under the direct control of Respondents and their agents.

### **JURISDICTION**

2. This Court has subject-matter jurisdiction over the instant petition and action under 28 U.S.C. §§ 2241(c)(1) and (c)(3), Art. I, § 9, cl. 2 of the United States Constitution (“Suspension Clause”), and 28 U.S.C. § 1331. Federal district courts have jurisdiction to hear habeas claims by non-citizens challenging both the lawfulness and the constitutionality of their detention. *See Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

3. Jurisdiction is also proper under 5 U.S.C. § 702 as Petitioner suffered a legal wrong from an agency action. This Court has further remedial authority pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 *et. seq.*, and the All Writs Act, 28 U.S.C. § 1651.

4. No petition for habeas corpus has previously been filed in any court to review Petitioner's case.

#### VENUE

5. Venue properly lies within the Western District of Texas because all events or omissions giving rise to this action occurred in the district. 28 U.S.C. § 1391(b) and 2241(d). Pearsall, Texas, is in Frio County, Texas which falls within the San Antonio Division. 28 U.S.C. § 124(d)(6).

#### PARTIES

6. Petitioner is a national and citizen of Mexico. He is currently detained at the South Texas ICE Detention Complex located at 566 Veteran Drive, Pearsall, Texas 78061.

7. Respondent PAMELA JO BONDI is the Attorney General of the United States and the most senior official in the United States Department of Justice ("DOJ"). She has the authority to interpret the immigration laws and adjudicate removal cases. 8 U.S.C. § 1103(g). The Attorney General delegates this responsibility to the Executive Office for Immigration Review ("EOIR"), which administrates the immigration courts and the Board of Immigration Appeals ("BIA" or "Board"). Respondent is named in her official capacity. Respondent's address is 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530.

8. Respondent KRISTI LYNN NOEM is the Secretary of the U.S. Department of Homeland Security ("DHS"), an agency of the United States. Respondent is responsible for the administration of immigration laws pursuant to 8 U.S.C. § 1103(a). The Secretary is a legal custodian of the

Petitioner. Respondent is named in her official capacity. Respondent's address is Department of Homeland Security, Washington, D.C. 20528.

9. Respondent TODD M. LYONS is the acting Director of the ICE within DHS, an agency of the United States. Respondent is responsible for the administration and enforcement of immigration laws. Respondent is named in his official capacity. Respondent's address is 500 12th Street SW, Mail Stop 5900 Washington, D.C. 20536.

10. Respondent SYLVESTER M. ORTEGA is the Field Office Director for Detention and Removal, ICE, DHS. Respondent is a custodial official acting within the boundaries of the judicial district of the United States Court for the Western District of Texas, San Antonio Division. Pursuant to Respondent's orders, Petitioner remains detained. Respondent is named in his official capacity. Respondent's address is 1777 NE Loop 410 Floor 15, San Antonio, Texas, 78217.

11. Respondent BOBBY THOMPSON is the warden of the South Texas ICE Detention Complex in Pearsall, Texas. He is Petitioner's immediate custodian and resides in the judicial district of the United States Court for the Western District of Texas, San Antonio Division. Respondent is named in his official capacity. Respondent's address is 566 Veteran Drive, Pearsall, Texas 78061.

12. DHS is a federal agency charged with administering statutes and regulations governing immigration pursuant to 6 U.S.C. §§ 111-115. Respondent's address is Department of Homeland Security, Washington, D.C. 20528.

#### **STATEMENT OF FACTS**

13. Petitioner is a native and citizen of Mexico, born on  in Monclova, Coahuila, Mexico.

14. Petitioner last entered the United States in 2001 without inspection and later settled in San Antonio, Texas in 2004. Petitioner is married to a United States citizen and has three United States citizen children.

15. On February 26, 2013, ICE served Petitioner with a **NTA (Form I-862)** initiating removal proceedings under INA § 240, 8 U.S.C. § 1229a. The NTA alleges that (1) he is not a U.S. citizen, (2) he is a native and citizen of Mexico, (3) he “arrived in the United States at or near Hidalgo, Texas, on or about an unknown date,” and (4) he “was not then admitted or paroled after inspection by an immigration officer,” and charges him as removable under INA § 212(a)(6)(A)(i), 8 U.S.C. § 1182(a)(6)(A)(i) as an alien present without admission or parole. *See Pet. Ex. 1.*

16. The NTA directs Petitioner to appear before the San Antonio Immigration Court at 800 Dolorosa Street, Suite 300, San Antonio, Texas 78207, thus placing his case squarely in § 1229a removal proceedings—not expedited removal or port-of-entry processing under 8 U.S.C. 1225(b). *Id.*

17. On the same date, ICE issued a **Warrant for Arrest of Alien (Form I-200)**. That warrant expressly states that Petitioner “is within the country in violation of the immigration laws and is therefore liable to being taken into custody as authorized by section 236 of the Immigration and Nationality Act,” and commands officers to take him into custody “for proceedings in accordance with the applicable provisions of the immigration laws and regulations.” *Id.*

18. Also on February 26, 2013, ICE issued a **Notice of Custody Determination (Form I-286)**. That form again invokes “section 236 of the Immigration and Nationality Act and part 236 of title 8, Code of Federal Regulations” as the authority for custody, and orders that Petitioner be “released on [his] own recognizance” pending a final determination by the IJ. *Id.*

19. ICE then executed an **Order of Release on Recognizance (Form I-220A)**. The form states in black-and-white that “[i]n accordance with section 236 of the Immigration and Nationality Act and the applicable provisions of Title 8 of the Code of Federal Regulations, you are being released on your own recognizance,” subject to conditions including reporting, obeying the law, and attending immigration-court hearings. *Id.*

20. The I-220A continuation page lists Petitioner’s residence as 1106 Gardina, San Antonio, Texas 78201, and records his personal contact information and fingerprint, confirming ICE’s classification of him as a resident of the San Antonio community. *Id.*

21. Petitioner has since remained a long-time resident of San Antonio, raising his U.S.-citizen children with his U.S.-citizen wife and appearing as required for ICE check-ins.

22. In November 2025, ICE detained Petitioner at his most recent check-in. He is now erroneously subject to mandatory detention under *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025) and the July 2025 ICE memo. *See Pet. Ex. 2.*

23. The present habeas petition challenges the government’s recent about-face: re-classifying him, after years of § 1226(a) release, as a § 1225(b)(2)(A) “applicant for admission” who must be detained without bond.

## **LEGAL FRAMEWORK**

### ***Detention Framework for Noncitizens***

24. The INA prescribes three basic forms of detention for noncitizens in removal proceedings.

25. First, individuals detained pursuant to 8 U.S.C. § 1226(a) are generally entitled to a bond hearing, unless they have been arrested, charged with, or convicted of certain crimes and are subject to mandatory detention. See 8 U.S.C. §§ 1226(a), 1226(c) (listing grounds for mandatory

detention); see also 8 C.F.R. §§ 1003.19(a) (immigration judges may review custody determinations made by DHS), 1236.1(d) (same).

26. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) as well as other recent arrivals deemed to be “seeking admission” under § 1225(b)(2).

27. Third, the INA authorizes detention of noncitizens who have received a final order of removal, including those in withholding-only proceedings. See 8 U.S.C. § 1231(a)–(b).

28. Sections 1225(b)(2) and 1226(a) are at issue in this case.

***Sections 1225(b)(2) and 1226(a):  
Different Statutes for Different Situations***

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

30. Critically, the Executive Office of Immigration Review (“EOIR”) issued regulations in 1997 clarifying that noncitizens who entered the country without inspection (“EWI”) were generally considered detained under the discretionary authority of § 1226(a), not the mandatory arrival authority of § 1225. *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) (“Despite being applicants for admission, aliens who are present without having been admitted or paroled (formed referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination”).

31. Consistent with this practice dating back decades, this interpretation allowed EWI individuals placed in standard removal proceedings to be considered for release on bond before an

IJ (unless statutorily ineligible due to criminal history). This treatment contrasts with individuals stopped *at the border*, who were historically only eligible for parole. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 220 (1996) (noting that § 1226(a) simply “restates” the detention authority previously found at § 1252(a)).

***The Statutory Text Confirms:***

***Section 1225 Applies to Border Detentions and Section 1226 Applies to Interior Detention***

32. The text itself confirms the above practice was the correct application of the detention statutes.

33. Section 1225, titled “Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing”, governs front-end inspection and expedited removal of applicants for admission at the border and ports of entry.

34. Notably, section 1225(a)(1) provides that an alien present without admission “shall be deemed for purposes of this section an applicant for admission.” That definition fixes status within § 1225; it does not by itself dictate that every such alien is detained under § 1225(b)(2) in every context.

35. Moreover, section 1225(b)(2)(A) applies where an “examining immigration officer” determines that an alien “seeking admission” is not clearly entitled to be admitted, and such alien “shall be detained for a proceeding under section 1229a.” Those phrases describe the inspection setting at a port-of-entry or apprehension near the border, not years-later interior arrests in ongoing § 1229a cases.

36. In contrast, section 1226(a) (“Apprehension and detention of aliens”) governs arrest and detention “pending a decision on whether the alien is to be removed,” and authorizes the government either to continue detention or to “release the alien on ... bond” or conditional parole.

37. Past precedent forecloses any contrary interpretation. The Supreme Court in *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018), summarized this structure: § 1225(b) governs detention of aliens “seeking admission to the country,” while § 1226 “generally governs” detention of aliens “already in the country” pending removal. Likewise, the Fifth Circuit in *Texas v. Biden*, 20 F.4th 928, 946–47 (5th Cir. 2021), held that § 1226(a) “applies to aliens who have already entered the United States,” in contradistinction to the “applicants for admission” covered by § 1225(b)(2).<sup>1</sup>

***The Unlawful Policy Shift:  
Mandatory Detention for EWI Noncitizens***

38. ICE abruptly reversed decades of practice in July 2025. ICE began asserting that all individuals who entered without inspection must be considered “seeking admission” and, therefore, are subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). *See Pet Ex. 2*. This agency decision occurred by and through Defendant,

39. This drastic policy reversal was formalized on September 5, 2025, when the Board of Immigration Appeals issued the precedential decision, *Matter of Yajure Hurtado*, 29 I&N Dec. 216, adopting this new, expansive interpretation.

40. This new legal interpretation fundamentally departs from the plain text of the INA, controlling federal precedent, and the government's own existing regulations, which historically placed EWI individuals like the Petitioner under the discretionary bond authority of §1226(a). Consequently, Defendants’ new policies are not only contrary to law but are also arbitrary and

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<sup>1</sup> The rule against surplusage confirms this structural reading by the Courts. The government’s claim that § 1225(b)(2)(A) imposes mandatory detention on all interior non-admitted aliens would render § 1226(a)—which authorizes discretionary bond—largely superfluous for the largest class of inadmissible aliens, § 1182(a)(6)(A)(i). It would also make portions of § 1226(c), including the provisions targeting inadmissible criminal aliens, redundant. Courts must “give effect, if possible, to every clause and word of a statute,” and Congress does not legislate in surpluses. *See Duncan v. Walker*, 533 U.S. 167, 174 (2001). The only construction that respects that command is the one that confines § 1225(b)(2) to its proper context: Detention and Processing at the Border.

capricious in violation of the Administrative Procedure Act (“APA”), having been adopted without the requisite notice-and-comment rulemaking procedures.

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

***APA:  
Impermissibly Retroactive Application of New Detention Regime***

42. Even assuming arguendo that DHS and the BIA have correctly divined the best reading of the INA (which they have not), their new detention regime cannot be applied to Petitioner. As implemented through the July 8, 2025 ICE Guidance and the precedential decision in *Matter of Yajure Hurtado*, the government has adopted what is in substance a new legislative rule: it changes the operative detention provision, strips an existing entitlement to seek bond, and replaces a decades-old framework with a new, harsher one. Like any other new regulation, that rule may operate only prospectively absent a clear congressional command to the contrary.

43. **ICE July 2025 Memo Regarding Detention:** Under *Landgraf v. USI Film Products*, a measure operates retroactively when it “attaches new legal consequences to events completed before its enactment.” 511 U.S. 244, 270 (1994). And under *Bowen v. Georgetown Univ. Hosp.*, agencies lack authority to promulgate retroactive rules without express congressional authorization. 488 U.S. 204, 208 (1988). Taken together, those cases make two points fatal to the government’s position: (1) an agency cannot, by rule, change the legal consequences of past conduct without a clear statement from Congress; and (2) relabeling such a rule as an “interpretation” does not expand the agency’s power or erase the presumption against retroactivity.

44. The July 8, 2025 ICE Guidance to displace that settled framework and to reclassify the same, long-ago entry without inspection and the already-commenced § 1229a proceedings as governed by 8 U.S.C. § 1225(b)(2), a mandatory-detention provision that historically applied at the border. That is not a minor course correction; it is the functional equivalent of promulgating a new regulation that switches the governing statute and replaces a discretionary, bond-eligible regime with mandatory confinement. Under *Bowen*, such a substantive change in the law is precisely the kind of rule that can operate only prospectively unless Congress has unmistakably authorized retroactivity.

45. **BIA Decision *Matter of Yajure Hurtado***: The Fifth Circuit applied those same principles in *Monteon-Camargo v. Barr*, 918 F.3d 423 (5th Cir. 2019), when the BIA attempted to broaden the definition of a theft-type crime involving moral turpitude and then apply that expansion to an older conviction. The court, relying on *Landgraf*'s “fair notice, reasonable reliance, and settled expectations” framework and its own administrative-retroactivity precedents, held that the agency could not retroactively attach new, harsher immigration consequences to completed criminal conduct by reinterpreting its statute and precedent. *Id.* at 432–34. What the BIA did there—revising the legal rule and then reaching backward to make it govern past conduct—is exactly what the Board is doing here. *Matter of Yajure Hurtado* attempts to reclassify Petitioner's long-ago entry and decade-old § 1226(a) custody as if they had always fallen under § 1225(b)(2), and to impose mandatory, no-bond detention where only discretionary, bond-eligible custody previously applied. Under *Monteon-Camargo*, that kind of retroactive change in the legal consequences of past events is impermissible.

***Recent Nationwide Class Judgment  
Rejecting the § 1225(b)(2) Detention Policy***

46. On November 20, 2025, the United States District Court for the Central District of California granted Petitioners’ Motion for Partial Summary Judgment in *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. Nov. 20, 2025), holding that DHS’s July 8, 2025 “Interim Guidance Regarding Detention Authority for Applicants for Admission” and the related practice of detaining all noncitizens arrested in the interior and charged as inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) pursuant to § 1225(b)(2)(A) are unlawful. The court concluded that such individuals are detained under 8 U.S.C. § 1226 and are therefore entitled to be considered for release on bond. *See Pet. Ex. 4.*

47. Petitioner falls within the “Bond Eligible Class” certified in *Maldonado Bautista*: he entered without inspection; he was not apprehended on arrival; and he is not detained under § 1226(c), § 1225(b)(1), or § 1231 at the time of DHS’s custody determination. The *Maldonado Bautista* class certification order extends the same declaratory relief to the Bond Eligible Class nationwide, declaring that class members are detained under § 1226, not § 1225(b)(2), and are bond eligible.

#### **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

48. Habeas under 28 U.S.C. § 2241 carries no statutory exhaustion requirement; any exhaustion doctrine here is prudential and yields when the usual exceptions apply—futility, lack of agency power to grant the relief sought, or risk of irreparable harm. *McCarthy v. Madigan*, 503 U.S. 140, 144–49 (1992).

49. It would be futile for Petitioner to seek a custody redetermination hearing before an IJ because of the BIA recent decision holding that anyone who has entered the U.S. without inspection is now considered an “applicant for admission” who is “seeking admission” and, therefore, subject to mandatory detention under § 1225(b)(2)(A). *See Matter of Yajure Hurtado*,

29 I&N Dec. 216; *see also Zaragoza Mosqueda v. Noem*, 2025 WL 2591530, at \*7 (C.D. Cal. Sept. 8, 2025) (noting that BIA’s decision in *Yajure Hurtado* renders exhaustion futile).

50. Indeed, Petitioner should not be required to request relief before EOIR because decisions by the BIA are binding on IJ’s and, thus, any bond request would be thwarted by *Yajure Hurtado*. 8 C.F.R. § 103.10; *see also* 8 C.F.R. § 1003.1(g).

51. Additionally, the agency does not have jurisdiction to review Petitioner’s claim of unlawful custody in violation of his due process rights, and it would therefore be futile for him to pursue administrative remedies. *Reno v Amer.-Arab Anti-Discrim. Comm.*, 525 U.S. 471 (1999) (finding exhaustion to be a “futile exercise because the agency does not have jurisdiction to review” constitutional claims).

52. Finally, absent judicial relief, the agency may continue to detain Petitioner depriving him of his statutory and regulatory right to a bond hearing before an IJ. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 1236.1(d)(1), 1003.19(a); *Matter of Guerra*, 24 I. & N. Dec. 37, 40–41 (B.I.A. 2006) (recognizing immigration court authority to redetermine custody under § 1226(a)).

### **CAUSES OF ACTION**

#### **COUNT ONE: VIOLATION OF DUE PROCESS CLAUSE**

53. Petitioner re-alleges and incorporates by reference all preceding paragraphs.

54. The Due Process Clause asks whether the government’s deprivation of a person’s life, liberty, or property is justified by a sufficient purpose. Here, there is no question that the government has deprived Petitioner of his liberty. 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.”

55. **Violation of Substantive Due Process:** Substantive due process protects against arbitrary and unjustified deprivations of liberty. In the immigration context, every detention must rest on a valid statutory foundation and bear a reasonable relationship to the statute’s purpose. *See Zadvydas v. Davis*, 533 U.S. at 690. Any deprivation of this fundamental liberty interest must be accompanied not only by adequate procedural protections, but also by a “sufficiently strong special justification” to outweigh the significant deprivation of liberty. *Id.*

56. Petitioner’s mandatory detention turns entirely on the manner of his entry decades ago—a factor that bears no necessary relation to present dangerousness or flight risk—and ignores his long-term residence, family and community ties, and prior compliance with conditions of release under § 1226(a).<sup>2</sup>

57. Detaining Petitioner mandatorily and indefinitely, without regard to his individual circumstances and without any opportunity to seek release, is arbitrary in the constitutional sense and punitive in effect. It is not reasonably related to any legitimate regulatory purpose, particularly where Congress has elsewhere provided a calibrated regime of discretionary release and mandatory detention keyed to objective risk factors in § 1226

58. Respondents’ actions violate Petitioner’s substantive due process rights.

59. **Violation of Procedural Due Process:** Procedural due process “imposes constraints on governmental decisions which deprive individuals of ‘liberty’ or ‘property’ interests within the meaning of the Due Process Clause.” *See Mathews v. Eldridge*, 424 U.S. 319, 332 (1976). The

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<sup>2</sup> That conclusion accords with decisions holding that detention without any individualized assessment of flight risk or danger, particularly after prior release into the community, offends substantive due process. *See Vieira v. Anda-Ybarra*, No. EP-25-CV-00432-DB, 2025 LX 410786, at \*\_\_ (W.D. Tex. 2025); *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 LX 467042, at \*\_\_ (W.D. Tex. 2025).

fundamental requirement of procedural due process is the opportunity to be heard “at a meaningful time and in a meaningful manner.” *Id.*

60. Respondent’s actions effectively deprive Petitioner of a statutorily mandated bond hearing under 8 U.S.C. § 1226(a). Due process requires accurate application of the governing legal standard before depriving an individual of liberty.<sup>3</sup>

61. Respondents’ actions violate Petitioner’s procedural due process rights.

**COUNT TWO:  
VIOLATION OF 8 U.S.C. § 1226(A)  
UNLAWFUL DENIAL OF RELEASE ON BOND**

62. Petitioner re-alleges and incorporates by reference all preceding paragraphs.

63. Petitioner was detained pursuant to “authority contained in section 236” of the INA; section 236 is codified at 8 U.S.C. § 1226. Despite this, the agency now holds him subject to 8 U.S.C. § 1225(b)(2).

64. Petitioner, arrested in the interior years after entry on a § 1226 warrant and previously released under § 1226(a), is a noncitizen “already in the country” whose custody is therefore governed by the discretionary regime of § 1226, which expressly authorizes release on bond. *See* 8 C.F.R. 236.1(d) & 1003.19(a)-(f).

65. Respondents have wrongfully adopted a policy and practice of arguing all noncitizens, such as Petitioner, are subject to mandatory detention under § 1225(b)(2). This Court should exercise its authority to interpret the statute independent of the agency’s interpretations. *See Loper Bright*

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<sup>3</sup> Courts in this Circuit have likewise held that prolonged, mandatory detention of long-time residents under § 1225(b)(2) without an individualized bond determination creates an intolerable risk of erroneous deprivation and violates due process and have ordered bond hearings with appropriate procedural safeguards. *See Vieira, Lopez-Arevalo, and Hernandez-Fernandez, supra; see also Hernandez-Fernandez v. Lyons*, No. 5:25-CV-00773-JKP, 2025 LX 493117, at \* (W.D. Tex. 2025).

*Enterprises v. Raimondo*, 603 U.S. 369 (holding that courts must exercise their own independent judgment in interpreting statutes and may not defer to an agency’s view simply because the statute is ambiguous, overruling *Chevron*).

66. The nationwide class judgment in *Maldonado Bautista* confirms this reading. After full briefing on the same DHS Guidance and the same statutory question, the Central District of California held that noncitizens in Petitioners’ posture—long-time interior residents arrested and charged with inadmissibility under § 1182(a)(6)(A)(i)—are detained under § 1226(a), not § 1225(b)(2), and are entitled to bond-eligible custody. *See Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM, slip op. at 10–16 (C.D. Cal. Nov. 20, 2025) (granting partial summary judgment declaring the July 8, 2025 DHS Policy unlawful and recognizing § 1226(a) as the governing detention authority for the Bond Eligible Class).

67. The current detention of Petitioner under § 1225(b)(2)(A) is thus without statutory authority, and the writ of habeas corpus must be granted.

**COUNT THREE:  
APA VIOLATION (5 U.S.C. § 706)  
THE AGENCY’S ACTIONS ARE ARBITRARY AND CAPRICIOUS**

68. Petitioner re-alleges and incorporates by reference all preceding paragraphs.

69. For decades after IIRIRA, DHS and EOIR interpreted the INA and its regulations to treat interior noncitizens who entered without inspection and were placed in § 1229a proceedings—like Petitioner—as § 1226(a) detainees with access to bond and custody redetermination, unless barred by criminal-history-based mandatory detention. ICE’s own 2013 custody documents in Petitioner’s case reflect this settled practice. *See Pet. Ex. 1*.

70. The new agency policy and *Matter of Yajure Hurtado* fail to meaningfully grapple with the statutory text they now stretch, the structural division between § 1225 and § 1226, the binding

regulations adopted in the wake of IIRIRA, or the reliance interests generated by decades of consistent application.

71. The adoption and application of this new detention regime to Petitioner is arbitrary and capricious within the meaning of 5 U.S.C. § 706(2)(A). Because § 706(2)(A) forbids agency action that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,” this regime, as applied to Petitioner, must be vacated.

**COUNT FOUR:  
APA VIOLATION (5 U.S.C. § 706)  
THE AGENCY’S ACTIONS ARE IMPERMISSIBLY RETROACTIVE**

72. Petitioner re-alleges and incorporates by reference all preceding paragraphs.

73. Even if the government’s new interpretation of § 1225(b)(2) could be applied prospectively (it cannot), its application to Petitioner is impermissibly retroactive under the principles articulated in *Landgraf v. USI Film Prods.*, 511 U.S. 244; *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204 (1988); *Monteon-Camargo v. Barr*, 918 F.3d 423.

74. Petitioner entered, lived, and litigated his case in a settled legal regime under which his custody was governed by the discretionary release framework of § 1226(a). His compliance with prior release conditions, and his decisions regarding residence, employment, and family, were made with the understanding that, if re-detained, he would be able to seek bond under § 1226(a) and the implementing regulations.

75. The July 8, 2025 ICE Guidance and *Matter of Yajure Hurtado* newly impose a harsher legal consequence—mandatory § 1225(b)(2) detention without bond eligibility—on a past, completed event (his decades-old entry without inspection) and strip away the legal protections that formed the backdrop of his prior choices (§ 1226(a) bond access).

76. As applied to Petitioner, the new detention regime is therefore impermissibly retroactive, “not in accordance with law,” and invalid under 5 U.S.C. § 706(2)(A).

**PRAYER FOR RELIEF**

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

- 1) Assume jurisdiction over this matter;
- 2) Order that Petitioner not be transferred outside of this District;
- 3) Issue an Order to Show Cause ordering Respondents to show why his Petition should not be granted within three days;
- 4) Declare that Petitioner’s detention is unlawful based on the counts above;
- 5) Declare Petitioner is a member of the *Maldonado Bautista* Bond Eligible Class, which has already obtained a declaration that DHS’s § 1225(b)(2) detention policy is unlawful, he asks this Court under 28 U.S.C. § 2243 to grant the writ forthwith and treat his custody as arising under § 1226(a);
- 6) Issue a Writ of Habeas Corpus ordering Respondents to release him from custody or provide him with a bond hearing pursuant to 8 U.S.C. § 1226(a) or the Due Process Clause within seven days;
- 7) Award him his attorney’s fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
- 8) Grant him any further relief this Court deems just and proper.

Respectfully submitted, this 26 November 2025.

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**ATTORNEY FOR PETITIONER**

By: s/Francisco Alvillar  
Francisco Alvillar  
State Bar No. 24057742

**VERIFICATION OF COUNSEL**

I, Francisco Alvillar, hereby certify that I am familiar with the case of the named Petitioner and that the facts as stated above are true and correct to the best of my knowledge and belief.

Dated: November 26, 2025

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**CERTIFICATE OF SERVICE**

I certify, in accordance with the rules of this Court, I filed the foregoing via the Court's CM/ECF system, which will send notice to all registered counsel of record.

Dated: November 26, 2025

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