UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

SAUL ALEJANDRO AMADOR ACEVEDO

Petitioner,

-against-

KRISTI NOEM, IN HER OFFICIAL CAPACITY, SECRETARY, U.S. DEPARTMENT OF HOMELAND SECURITY;

PAMELA BONDI, IN HER OFFICIAL CAPACITY, U.S. ATTORNEY GENERAL;

TODD LYONS, IN HIS OFFICIAL CAPACITY, ACTING DIRECTOR, IMMIGRATION AND CUSTOMS ENFORCEMENT;

MIGUEL VERGARA, IN HIS OFFICIAL CAPACITY ICE FIELD OFFICE DIRECTOR DETENTION AND REMOVAL

DAVID COLE, WARDEN, IN HIS OFFICIAL CAPACITY, RIO GRANDE PROCESSING DETENTION CENTER.

REYNALDO CASTRO, IN HIS OFFICIAL CAPACITY AS WARDEN OF SOUTH TEXAS DETENTION FACILITY

Respondents.

PETITION FOR WRIT OF HABEAS CORPUS

Case No. 5:25-cv-1619

PETITION FOR WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241 AND
COMPLAINT FOR PRELIMINARY INJUNCTIVE RELIEF

The Petitioner, Saul Alejandro Amador Acevedo, (hereinafter "Mr. Amador Acevedo") respectfully petitions this Honorable Court for a Writ of Habeas Corpus to remedy Petitioner's unlawful detention in violation of his constitutional and statutory rights.

I. INTRODUCTION

1. Saul Alejandro Amador Acevedo with A# [redacted] (hereinafter "Respondent") is a citizen and native of Jerecuaro, Guanajuato, Mexico. He has lived in the United States for more than ten years.
2. Respondent has no criminal record.
3. Respondent has been paying taxes in the United States consistently since 2021. He is the father of a (7) year-old USC daughter, to whom he provides emotional and financial support.
4. In March 2012, Respondent entered the United States without inspection. He crossed the border on foot, leaving from Piedras Negras, Mexico, and entering through Eagle Pass, Texas. No immigration officer or other authority saw him during his entry. After crossing, he traveled to Austin, Texas, where he went to live with an uncle. This was his only entry into the United States.
5. In 2021, Respondent was stopped by a police officer because one of the lights on his vehicle was broken. During the encounter, the officer contacted immigration authorities, who issued an order instructing Respondent to present himself to ICE for check-in. Since then, Respondent has been under ICE supervision and has complied with all

requirements, including presenting himself for scheduled check-ins at the ICE office as instructed.

6. On October 22, 2025, Respondent appeared for his scheduled ICE check-in as he had consistently done for more than (3) years and six months. He waited in a long line outside the ICE building located, Respondent completed the intake form handed to him by an officer, and returned it as instructed. After several minutes, the same officer returned accompanied by multiple ICE officers. They called the Respondent by name in a serious tone and ordered him to follow them to an interior office without providing any explanation.
7. Inside, the Respondent was instructed to sit and wait. He remained in that room for approximately two to three hours without being told why he was being held or what was happening with his case. Officers periodically walked in and out, but no one addressed him. Respondent was not permitted to make a phone call or speak with anyone.
8. After the prolonged wait, officers escorted him to another area, an enclosed holding space surrounded by metal fencing. Once inside, an ICE officer addressed the group of detainees in an accusatory tone, stating that they were being arrested because they had "entered through the window and not through the door" of the United States. The officer further stated that their entry had been illegal and that, from that moment on, all privileges would be restricted. He informed them that they would be allowed only a single phone call and strongly urged them to sign for voluntary departure. The Respondent felt pressured and fearful, but he did not sign any voluntary departure paperwork.

9. Respondent is presently detained in the South Texas Processing Center ("STIPC") in Pearsall, TX.

10. Respondent has requested and is set for a custody re-determination from an Immigration Judge for December 4th, 2025. However, it will likely be denied as the Immigration Judge will find it does not have jurisdiction to review his custody redetermination due to a new policy memo and *Matter of Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025)* holding that everyone present in the United States who did not enter with a valid visa is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A).

11. The BIA's September 5, 2025, precedential decision in *Matter of Yajure-Hurtado*, held that the plain language of 8 U.S.C. § 1225(b)(2)(A) mandates that all aliens who have entered the United States without admission are subject to mandatory detention. 29 I&N Dec. 216 (BIA 2025). This decision is in contravention with the DHS's longstanding interpretation that noncitizens already present in the country such as Respondent were detained pursuant to 8 U.S.C. § 1226(a) and not §1225(b)(2)(A).

12. On July 8, 2025, DHS issued a memo to all employees of Immigration and Customs Enforcement ("ICE") stating that "[t]his message serves as notice that DHS, in coordination with the Department of Justice (DOJ), has revisited its legal position on detention and release authorities. DHS has determined that section 235 of the Immigration and Nationality Act (INA), rather than section 236, is the applicable immigration detention authority for all applicants for admission. The following interim guidance is intended to ensure immediate and consistent application of the Department's legal

interpretation while additional operational guidance is developed." Memorandum, U.S. Immigration & Customs Enf't, Interim Guidance Regarding Detention Authority for Applications for Admission (July 8, 2025), available at AILA Doc. No. 25071607, https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission

13. Mr. Amador Acevedo's continued detention is an unlawful violation of his Fifth Amendment right to due process, an incorrect interpretation of immigration law under the Immigration and Nationality Act (INA) and its implementing regulations, and is *ultra vires*.

14. Petitioner's detention under INA § 1225(b)(2) is unlawful. Petitioner, who was apprehended in the interior of the U.S., should not be considered an "applicant for admission" who is presently "seeking admission." Rather, his detention is pursuant to 8 U.S.C. § 1226(a), which was DHS's initial determination upon apprehension.

15. Petitioner respectfully requests this Court grant the instant petition for a writ of habeas corpus under 28 U.S.C. § 2241 and enjoin Respondent's continued detention of Petitioner to ensure his due process rights and his ability to provide care for his USC daughter who has needs that require Petitioner's presence and support. In the alternative, Petitioner respectfully requests the Court order Respondents to show cause why this Petition should not be granted within (3) days. *See* 8 U.S.C. § 2243.

II. JURISDICTION AND VENUE

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

17. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I § 9, cl. 2 of the United States Constitution (Suspension Clause). This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgement Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

18. This Court is not stripped of its jurisdiction under 8 U.S.C. § 1252(g) as this case does not concern the Respondents' decision to commence removal proceedings, adjudicate cases, or execute removal orders. Nor does 8 U.S.C. § 1252(b)(9) apply as Petitioner is not challenging a removal order directly or indirectly. *See e.g.*, Vieira v. Anda-Ybarra, No. EP-25-CV-00432-DB, 2025 WL 2937880, 2025 U.S. Dist. LEXIS 203930 at *5-9 (W.D. Tex. Oct. 16, 2025). *See also* Jennings v. Rodriguez, 583 U.S. 281, 293 (2018). Nor does 8 U.S.C. § 1226(e) apply here as Petitioner is not challenging a discretionary judgment by the Attorney General.

19. Petitioner is detained in civil immigration custody at the South Texas ICE Processing Center in Pearsall, Texas. He has been detained since approximately October 22, 2025. Venue is proper in this district because Petitioner is detained within this district, no real property is involved in this action, and a substantial amount of the events giving rise to this claim occurred within this district. 28 U.S.C. § 1391(e).

III. REQUIREMENTS OF 28 U.S.C. § 2243, WRIT OF HABEAS CORPUS ISSUANCE, RETURN, HEARING AND DECISION

20. The Court either must grant the instant petition for writ of habeas corpus or issue an order to show cause to Respondents, unless Petitioner is not entitled to relief. If the Court issues an order to show cause, Respondents must file a response "within three days" unless the Court permits additional time for good cause, which is not to exceed twenty days. 28 U.S.C. § 2243.

21. 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 writ of habeas corpus, challenging illegality of detention, is reduced to a sham if the trial courts do not act within a reasonable time. *Rhueark v. Wade*, 540 F. 2d 1282, 1283 (5th Cir. 1976); *Jones v. Shell*, 572 F.2d 1278, 1280 (8th Cir. 1978). Due to the nature of this proceeding, Petitioner asks this Court to expedite proceedings in this case as necessary and practicable for justice.

IV. PARTIES

22. Petitioner, Mr. Saul Alejandro Amador Acevedo, is a 29-year-old citizen of Mexico. He is currently detained at the South Texas ICE Processing Center, 566 Veterans Blvd., Pearsall, Texas in the custody, under the direct control, of Respondents and their agents. He has been detained in civil immigration detention since October 22, 2025.

23. Respondent Pamela 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, she is responsible for the administration of the immigration laws and policy of the immigration courts. She has the authority to adjudicate removal cases and oversees the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the BIA.

24. Respondent Kristi 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 INA, and oversees ICE, the component agency responsible for Petitioner's detention. Respondent Noem is empowered to carry out any administrative order against Petitioner and is a legal custodian of Petitioner.

25. Respondent Todd M. Lyons is sued in his official capacity as nationwide Acting Director of Immigration and Customs Enforcement (ICE). ICE is the agency within DHS that is specifically responsible for managing all aspects of the immigration enforcement process, including immigration detention. ICE is responsible for apprehension, incarceration, and removal of noncitizens from the United States and as such Acting Director Lyons is a legal custodian of Petitioner.

26. Respondent Sylvester Ortega is sued in his official capacity as the Director of the San Antonio Field Office of U.S. Immigration and Customs Enforcement. Director Ortega is responsible for the enforcement of the immigration laws within this district, and for ensuring that ICE officials follow the agency's policies and

procedures. Respondent Ortega is a legal custodian of Petitioner and has authority to release him.

27. Respondent Reynaldo Castro is the Warden of South Texas Detention Center, and he has immediate physical custody of Petitioner pursuant to a contract with ICE to detain noncitizens and is a legal custodian of Petitioner. He is sued in his official capacity, as well as by any successors or assigns.

V. STATEMENT OF FACTS AND PROCEDURAL BACKGROUND

28. Saul Alejandro Amador Acevedo with A# [redacted] (hereinafter "Respondent") is a citizen and native of Jerecuaro, Guanajuato, Mexico. He has lived in the United States for more than ten years.

29. Respondent has no criminal record.

30. Respondent has been paying taxes in the United States consistently since 2021. He is the father of a (7) year-old USC daughter, to whom he provides emotional and financial support.

31. In March 2012, Respondent entered the United States without inspection. He crossed the border on foot, leaving from Piedras Negras, Mexico, and entering through Eagle Pass, Texas. No immigration officer or other authority saw him during his entry. After crossing, he traveled to Austin, Texas, where he went to live with an uncle. This was his only entry into the United States.

32. In 2012, Respondent was stopped by a police officer because one of the lights on his vehicle was broken. During the encounter, the officer contacted immigration authorities, who issued an order instructing Respondent to present himself to ICE for check-in. Since then, Respondent has been under ICE supervision and has complied with all requirements, including presenting himself for scheduled check-ins at the ICE office as instructed.

33. On October 22, 2025, Respondent appeared for his scheduled ICE check-in as he had consistently done for more than (3) years and six months. He waited in a long line outside the ICE building, Respondent completed the intake form handed to him by an officer, and returned it as instructed. After several minutes, the same officer returned accompanied by multiple ICE officers. They called the Respondent by name in a serious tone and ordered him to follow them to an interior office without providing any explanation.

34. Mr. Amador Acevedo was placed into removal proceedings under 8 U.S.C. § 1229(a), through the issuance of the Notice to Appear.

35. The case has been scheduled for a custody and bond hearing to be held on December 4, 2025, before Immigration Judge McKee.

36. The Respondent intends to apply for Cancellation of Removal and Adjustment of Status for Certain Non-Permanent Residents pursuant to 8 U.S.C. § 1229b(b)(1).

37. Petitioner's instant removal case is still pending.

VI. LEGAL FRAMEWORK

A. Due Process Clause

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

39. Due Process requires that there be "adequate procedural protections" to ensure that the government's asserted justification for a noncitizen's physical confinement "outweighs the 'individual's constitutionally protected interest in avoiding physical restraint.'" *Id.* at 690 (*quoting* Kansas v. Hendricks, 521 U.S. 346, 356 (1997)). In the immigration context, the Supreme Court only recognizes two purposes for civil detention: preventing flight and mitigating the risks of danger to the community. Zadvydas, 533 U.S. at 690; Demore, 538 U.S. at 528. A noncitizen may only be detained based on these two justifications if they are otherwise statutorily eligible for bond. Zadvydas, 533 U.S. at 690.

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

B. Immigration and Nationality Act

41. Title 8 of the United States Code, which codifies the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et seq.*, sets forth the Government's authority to detain aliens during their removal proceedings.

42. The INA authorizes detention for aliens under four distinct provisions:

a. **Discretionary Detention, 8 U.S.C. § 1226(a)** generally allows for the detention of aliens already present in the United States who are in regular, non-expedited removal proceedings; however, permits aliens who are not subject to mandatory detention to be released on bond or on their own recognizance. Its implementing regulations affords noncitizens procedural protections such as a bond redetermination hearing before an IJ and the right to appeal the custody determination. *See* 8 C.F.R. §§ 1236.1(d); 1003.19.

b. **Mandatory Detention of "Criminal" Aliens, 8 U.S.C. § 1226(c)** generally requires mandatory detention of aliens who are subject to removal because of certain criminal or terrorist-related activity after they have been released from criminal custody or incarceration.

c. **Mandatory Detention of "Applicants for Admission", 8 U.S.C. § 1225(b)** generally requires detention for certain noncitizens deemed "applicants for admission", such as aliens immediately arriving in the U.S. at a port of entry or other noncitizens who have recently arrived and are actively "seeking admission" after entering the United States unlawfully.

d. **Detention Following Completion of Removal Proceedings, 8 U.S.C. § 1231(a)** generally requires the detention of certain noncitizens who are subject to a final order of removal during the

90-day period after the completion of removal proceedings and permits detention beyond that point for certain noncitizens. 8 U.S.C. § 1231(a)(2), (6).

43. This case concerns whether Petitioner is detained pursuant to 8 U.S.C. § 1225(b)(2) or § 1226. Both provisions were enacted as part of the Illegal Immigration Reform and Responsibility Act ("IIRIRA") of 1996, Pub. L. No. 104-208, Div. C. §§ 203-03, 110 Stat. 3009-546, 3009-582 to 3009-583, 3009-585. Earlier this year, section 1226 was recently amended by the Laken Riley Act, Pub. L. No 119-1, 139 Stat. 3 (2025).

44. Following enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225(b) and that they were instead detained under § 1226(a) after an arrest warrant was issued by the Attorney General. *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 (formerly referred to as aliens who entered without inspection) *will be eligible for bond and bond redetermination*") (emphasis added).

45. Until recently, for nearly thirty years, the longstanding agency practice of ICE (an agency of DHS) and EOIR (an agency of DOJ) was to interpret § 1226(a) to apply to noncitizens who were already present in the United States and arrested in the interior of the United States irrespective of their manner of entry. If it was

determined that the noncitizen was not a flight risk or danger to the community, a change in their custody status was granted and they were released from detention either by paying the requisite bond amount or on their own recognizance. 8 U.S.C. § 1226(a)(2). Certain noncitizens were deemed ineligible for release and mandatorily detained because of their criminal history pursuant to 8 U.S.C. § 1226(c).

46. On July 8, 2025, without warning, ICE (in coordination with the DOJ) reversed course and adopted a policy that upended the well-established understanding of the statutory and regulatory framework and altered decades of practice. The new policy claims that all noncitizens that entered the U.S. without admission or inspection are "applicants for admission" and charged with removability under § 1182 are subject to mandatory detention pursuant to 8 U.S.C. § 1225(b). Under this new policy, only noncitizens who were admitted to the US and charged with deportability under 8 U.S.C. § 1227 are detained under § 1226(a) and therefore eligible for a custody determination (if not subject to mandatory detention under 8 U.S.C. § 1226(c)).

47. The new policy applies to all noncitizens regardless of historically relevant particularities to determine whether a noncitizen should be released or remain in custody, such as: the time, place or manner of entry, length of time in the U.S.; whether they pose a flight risk or danger to the community; whether there are serious medical conditions that require ongoing care for the noncitizen or their family; their family ties in the United States who require necessary care dependent on the noncitizen; and whether their continued detention is in the community's best

interest. Significantly, the policy also applies to noncitizens previously arrested and were determined to be detained, released, or re-detained pursuant to § 1226(a).

48. On September 5, 2025, the BIA (an agency of DOJ) issued a published decision in *Matter of Yajure-Hurtado*, where it engaged in a statutory and regulatory interpretation of §1225 and § 1226, and held that IJs lacked jurisdiction to conduct bond requests for inadmissible noncitizens as they are subject to mandatory detention under the "plain language" of § 1225. *See* 29 I&N Dec. 216 (BIA 2025) (*citing Jennings v. Rodriguez*, 583 U.S. 281 (2018)). The BIA's holding tracks the arguments set forth by ICE in their recent policy change.

49. Numerous district courts, many in this Court's district, have held that Respondents' new policy violates the plain language of the INA and is unlawful. *See e.g.*, *Hernandez-Fernandez v. Lyons*, 5:25-CV-00773-JKP, 2025 U.S. Dist. Lexis 20675 (W.D. Tex. Oct. 21, 2025) (granting petition for writ of habeas corpus and collecting 12 cases); *Vieira v. Anda-Ybarra*, No. EP-25-CV-00432-DB, 2025 WL 2937880, 2025 U.S. Dist. LEXIS 203930 (W.D. Tex. Oct. 16, 2025) (granting petition for writ of habeas corpus); *Buenrostro-Mendez v. Bondi*, Case No. H-25-3726, 2025 WL 2886346, at *2 (S.D. Tex. Oct. 7, 2025); *Ortiz-Ortiz v. Bondi*, No. 5:25-CV-132, slip op. at *4 n.1 (S.D. Tex. Oct. 15, 2025); *Rodriguez v. Bostock*, No. 3:25-cv-5240, 2025 WL 2782499, at *1 & n.3 (W.D. Wash. Sep. 30, 2025) (collecting cases and noting that "[e]very district court to address" the statutory question "has concluded that the government's position belies the statutory text of the INA, canons of statutory interpretation, legislative history, and longstanding agency practice").

50. Similarly, numerous district courts have refused to find persuasive or give the BIA's statutory interpretation of § 1225 and §1226 deference in *Matter of Yajure-Hurtado* as statutory interpretation is in the province of the federal courts, not agencies. *See e.g.*, *Buenrostro-Mendez v. Bondi*, Case No. H-25-3726, 2025 WL 2886346, at *6 (S.D. Tex. Oct. 7, 2025) (*citing* *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 413 (2024) and collecting cases). *Ortiz-Ortiz v. Bondi*, No. 5:25-CV-132, slip op. at *4 n.1 (S.D. Tex. Oct. 15, 2025) (*citing* *Salcedo Aceros v. Kaiser*, No. 25-CV-6924, 2025 WL 2637503, at *12 (N.D. Cal. Sept. 12, 2025)).

51. This new interpretation is now advanced by the government after decades of consistent use to the contrary. The government's position contravenes the plain language of the INA and its regulations and has been consistently rejected by courts. See, e.g., *Martinez*, 2025 WL 2084238; *Gomes v. Hyde*, No. 1:25-cv-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Rodriguez v. Bostock*, No. 3:25-cv-05240-TMC, 2025 WL 1193850 (W.D. Wash. Apr. 24, 2025).

52. This new interpretation is inconsistent with the plain language of the INA. First, the government disregards a key phrase in § 1225. "[I]n the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien ***seeking admission*** is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a[.]" 8 U.S.C. § 1225(b)(2)(A) (emphasis added). In other words, mandatory detention applies when "the individual is: (1) an 'applicant for admission'; (2) 'seeking admission'; and (3) 'not clearly and beyond a doubt entitled to be admitted.'"

Martinez, 2025 WL 2084238, at *2. The "seeking admission" language, "necessarily implies some sort of present tense action." *Martinez*, 2025 WL 2084238, at *6; *see also* *Matter of MD-C-V-*, 28 I. & N. Dec. 18, 23 (B.I.A. 2020) ("The use of the present progressive tense 'arriving,' rather than the past tense 'arrived,' implies some temporal or geographic limit . . . ."); *U.S. v. Wilson*, 503 U.S. 329, 333 (1992) ("Congress' use of verb tense is significant in construing statutes.")

53. In other words, the plain language of § 1225 applies to immigrants currently seeking admission into the United States at the nation's border or another point of entry. It does not apply to noncitizens "already present in the United States"—only § 1226 applies in those cases. *See* *Jennings*, 583 U.S. at 303. In *Jennings*, the Supreme Court discussed the relationship between § 1225 and § 1226: "In sum, U.S. immigration law authorizes the Government to detain certain aliens seeking admission into the country under §§ 1225(b)(1) and (b)(2). It also authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceed-ings under §§ 1226(a) and (c)." 583 U.S. at 289. Although this statement might be considered as dicta, courts in the Fifth Circuit "are generally bound by Supreme Court dicta, especially when it is recent and detailed." *McRorey v. Garland*, 99 F.4th 831, 837 (5th Cir. 2024) (*quoting* *Hollis v. Lynch*, 827 F.3d 436, 448 (5th Cir. 2016), abrogated on other grounds by *United States v. Diaz*, 116 F.4th 458 (5th Cir. 2024)); accord *Siders v. City of Brandon*, 123 F.4th 293, 304 (5th Cir. 2024). *See also* *Morales Aguilar v. Bondi, et al.*, No. 5:25-CV-01453-JKP, Slip Op. at *10-11 (W.D. Tex. Nov. 26, 2025).

54. Second, the government's interpretation would render newly enacted portions of the INA superfluous. "When Congress amends legislation, courts must presume it intends its amendment to have real and substantial effect." *Van Buren v. United*

States, 593 U.S. 374, 393 (2021). Congress passed the Laken Riley Act (the "Act") in January 2025. The Act amended several provisions of the INA, including §§ 1225 and 1226. Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025). Relevant here, the Act added a new category of noncitizens subject to mandatory detention under § 1226(c)—those already present in the United States who have also been arrested, charged with, or convicted of certain crimes. 8 U.S.C. § 1226(c)(1)(E); 8 U.S.C. § 1182(a)(6)(A). Of course, under the government's position, these individuals are already subject to mandatory detention under § 1225—rendering the amendment redundant. Likewise, mandatory-detention exceptions under § 1226(c) are meaningful only if there is a default of discretionary detention—and there is, under § 1226(a). *See* *Rodriguez*, 2025 WL 1193850, at *12

55. Additionally, "[w]hen Congress adopts a new law against the backdrop of a longstanding administrative construction, the court generally presumes that the new provision works in harmony with what came before." *Monsalvo v. Bondi*, 604 U.S. ___, 145 S. Ct. 1232, 1242 (2025). Congress adopted the Act against the backdrop of decades of agency practice applying § 1226(a) to immigrants like Petitioner, who are present in the United States but have not been admitted or paroled. *Rodriguez*, 2025 WL 1193850, at *15; *Martinez*, 2025 WL 2084238, at *4; 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) ("Despite being applicants for admission, aliens who are present without having been admitted or paroled . . . will be eligible for bond and bond redetermination.").

56. Petitioner's case is ripe for review. His only option is to file an appeal to the BIA which will be futile since *Matter of Yajure-Hurtado* has made their decision in this matter a foregone conclusion. Exhaustion is not a statutory requirement for a writ of habeas corpus. *See Buenrostro-Mendez v. Bondi*, Case No. H-25-3726, 2025 WL 2886346, at *4 (S.D. Tex. Oct. 7, 2025) (*citing Lopez Benitez v. Francis*, 25 Civ. 5937, 2025 WL2371588, at *13 (S.D.N.Y. August 13, 2025)),

57. Moreover, delaying to await the BIA's foregone conclusion would severely prejudice Petitioner. According to the agency's own data, during fiscal year 2024, the BIA's average processing time for a bond appeal was 204 days, approximately seven months. Meaning for an average case, such as Petitioner's, where bond will likely be denied in December 2025 it would not be heard until June 2026. *See Vazquez v. Bostock*, 3:25-CV-05240-TMC (D. W.D. Wash. May 2, 2025).

VII. CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION
Violation of the Due Process Clause of the Fifth Amendment of the United States Constitution.

58. Petitioner repeats and incorporates by reference all allegations above as though set forth fully herein.

59. 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. His continued detention violates his right to substantive and procedural due process guaranteed by the Fifth Amendment to the U.S. Constitution.

60. 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." As a noncitizen who shows well over "two years" physical presence in the United States (indeed he has nearly 5 years), Mr. Oseguera is entitled to Due Process Clause protections against deprivation of liberty and property. *See Zadvydas*, 533 U.S. at 693 ("[T]he 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 not only by adequate procedural protections, but also by a "sufficiently strong special justification" to outweigh the significant deprivation of liberty. *Id.* at 690.

61. This Respondent's new policy, along with the BIA's decision in *Yajure-Hurtado* violates the procedural due process rights of noncitizen detainees, both facially and as applied. It lacks any reference to or establishment of any procedure for challenging its invocation. The Court should find that there can be no possible application of this policy that would satisfy due process where it purports to authorize the most severe and recognized deprivation of liberty without a hint of a process to challenge such deprivation. In contrast, as the Supreme Court in *Demore* highlighted in upholding the mandatory detention of a noncitizen convicted of a crime under § 1226(c), "process" has been built into that mandatory detention scheme. For example, § 1226(c) applies to detainees whose convictions were generally "obtained following the full procedural protections [the] criminal justice

system offers." Demore v. Kim, 538 U.S. 510, 513 (2003); *id.* at 525 n.9, (noting that "respondent became 'deportable' under § 1226(c) only following criminal convictions that were secured following full procedural protections"). And if mandatory detention becomes unnecessarily prolonged in that context, the due process' prohibition of arbitrary government detention could entitle a detainee "to an individualized determination as to his risk of flight and dangerousness if the continued detention became unreasonable or unjustified." Id. at 532 (Kennedy, J., concurring). Detention pursuant to the automatic stay after the government already failed to establish a justification for it, with no process afforded to challenge the detention as arbitrary, is facially violative of procedural due process.

62. The Fifth Amendment guarantees that no person shall be deprived of liberty 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 Clause protects." Zadvydas v. Davis, 533 U.S. 678, 690 (2001). "Government detention violates the Due Process Clause unless it is ordered in a criminal proceeding with adequate procedural safeguards, or in certain special and non-punitive circumstances 'where a special justification ... outweighs the individual's constitutionally protected interest in avoiding physical restraint.' " Zavala v. Ridge, 310 F. Supp. 2d 1071, 1076 (N.D. Cal. 2004) (*quoting* Kansas v. Hendricks, 521 U.S. 346, 356 (1997)).

63. Here, the DHS, affirmed by the BIA, has determined, improperly, that all persons present in the U.S. who entered without admission are ineligible for bond.

It is thus a foregone conclusion that the BIA will affirm the IJ's decision here, and find Petitioner ineligible for bond. Like the accused in criminal cases, habeas is proper. *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).

SECOND CAUSE OF ACTION
Violation of the Immigration and Nationality Act

64. Petitioner repeats and incorporates by reference all allegations above as though set forth fully herein.

65. 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 IJ and the DHS now find that he is detained subject to 8 U.S.C. § 1225(b)(2).

66. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. Mandatory detention does not apply to those who previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a) and are eligible for release on bond, unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

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

68. The unlawful application of § 1225(b)(2) to Petitioner violates the INA.

THIRD CAUSE OF ACTION
Injunctive Relief

69. Petitioner re-alleges and incorporates herein by reference each and every allegation contained in the above paragraphs of this Petition.

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

VIII. RELIEF SOUGHT

Wherefore, Petitioner respectfully requests that this Honorable Court:

1) Assume jurisdiction over this matter;
2) Declare that Respondents' new mandatory detention policy that all noncitizens that entered the U.S. without admission or inspection are "applicants for admission" and charged with removability under § 1182 are subject to mandatory detention pursuant to 8 U.S.C. § 1225(b) is unlawful and in violation of the INA;
3) Issue an order directing Respondents to show cause why the writ should not be granted within seventy-two hours;

4) Order Respondents to file with the Court a complete copy of the administrative file from the Dept. of Justice and the Dept. of Homeland Security;

5) Enjoin ICE from transferring Petitioner outside of the Western District of Texas while this matter is pending;

6) Grant the writ of habeas corpus ordering Respondents to release Petitioner.

7) In the alternative, Respondents should provide Petitioner a fair bond redetermination hearing before an Immigration Judge as provided by 8 U.S.C. § 1226 and enjoin his further detention under § 1225(b). Many courts, including some in this district, have placed the burden on Respondents to bear the burden of justifying Petitioner's continued detention by clear and convincing evidence at the bond redetermination hearing. *See* Vieira v. Anda-Ybarra, No. EP-25-CV-00432-DB, 2025 WL 2937880, 2025 U.S. Dist. LEXIS 203930 (W.D. Tex. Oct. 16, 2025) (collecting cases); *Erazo Rojas v. Noem*, No. EP-25-CV-442-KC, 2025 WL 3038262, 2025 U.S. Dist. LEXIS 217585 (W.D. Tex. Oct. 30, 2025).

8) Award the Petitioner reasonable costs and attorneys' fees under the Equal Access to Justice Act, as amended, 28 U.S.C. §2412; undersigned counsel recognizes the Fifth Circuit's decision in Barco v. Witte, 65 F.4th 782 (5th Cir. 2023), *cert. denied*, 144 S. Ct. 553 (2024) ruling that fees are not available to be awarded in 28 U.S.C. § 2241. Nonetheless, the issue is ripe for redetermination at the Fifth Circuit. Recently, the Tenth Circuit held that the reasoning in Barco was not compelling and granted EAJA fees in an immigration detention habeas action. Daley v. Ceja, 2025 WL 3058588, 2025 U.S. App. LEXIS 28669 at *24-26 (10th Cir. Nov. 3, 2025) (declining

to follow the Fourth and Fifth Circuit precedents holding that habeas is a "hybrid proceeding" no matter the underlying detention.); *see also* Abioye v. Oddo, 2024 WL 4304738, 2024 US. Dist. LEXIS 174205 at *5-8 (W.D. Pa. Sept. 26, 2024) (highlighting the circuit split between the Fourth and Fifth Circuits versus the Second and Ninth Circuits). Given ICE's recent actions in detaining individuals without substantial justification, EAJA fees are needed to ensure attorneys can confront detention that is unconstitutional.

9) Grant any other relief that this Court deems just and proper.

Respectfully submitted this 02nd day of December 2025 by:

/s/ David H. Square

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ATTORNEY FOR PETITIONERS

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

I represent Petitioner, Saul Alejandro Amador Acevedo, 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 03rd day of December 2025.

/s/ David H. Square
David H. Square, Esq.