IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

DIEGO ARMANDO CALCURIAN MOROS,

Petitioner,

v.

WARDEN, *in their official capacity* as Warden of the ERO El Paso Camp East Montana Detention Facility;

MARY DE ANDA-YBARRA, *in her official capacity* as Field Office Director of the ICE El Paso Field Office of Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement; U.S. Department of Homeland Security;

TODD M. LYONS, *in his official capacity* as Acting Director, Immigration and Customs Enforcement, U.S. Department of Homeland Security;

KRISTI NOEM, *in her official capacity* as Secretary, U.S. Department of Homeland Security; and

PAMELA JO BONDI, *in her official capacity* as Attorney General of the United States;

Respondents.

Case No. 3:25-cv-622

PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. §2241

1. Petitioner, DIEGO ARMANDO CALCURIAN MOROS, by and through undersigned counsel, respectfully petitions this Honorable Court to review his unlawful detention during his pending removal proceedings in violation of his constitutional and statutory rights, and issue a

Writ of Habeas Corpus.

INTRODUCTION

2. Petitioner-Plaintiff ("Petitioner") is presently being detained by U.S. Immigration and Customs Enforcement ("ICE") at ERO El Paso Camp East Montana Detention Facility located in El Paso, Texas.

3. Petitioner is a native and citizen of Venezuela. He entered the United States on September 6, 2022, without inspection and has not left since.

4. Petitioner has a pending Form I-589, Application for Asylum and Withholding of Removal, which was filed before the Executive Office for Immigration Review ("EOIR"). Petitioner has been issued a work authorization document relating to his pending application.

5. Petitioner is currently scheduled for a preliminary hearing before the El Paso Immigration Court on December 31, 2025.

6. Petitioner's detention became unlawful on September 19, 2025, when he was detained by ICE. His continued detention is an unlawful violation of due process and the result of ICE's incorrect interpretation of immigration law.

7. ICE detained Petitioner during his ICE reporting check-in at the Dallas ICE Field Office.

8. Petitioner respectfully asks this Court to order that Respondents release Petitioner from custody or in the alternative order Respondents to conduct a bond hearing to ensure his due process rights and his ability to be reunited with his family and friends.

9. In the alternative, Petitioner respectfully requests the Court order Respondents to show cause why this Petition should not be granted within three days. 28 U.S.C. § 2243.

REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243

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

11. Petitioner is "in custody" for the purpose of § 2241 because Petitioner was arrested and is presently detained by Respondents.

CUSTODY

12. Petitioner is currently in the custody of ICE at ERO El Paso Camp East Montana Detention Facility in El Paso, Texas. *See* Exhibit P-1, [ICE Detainee Locator Results]. He is therefore in "'custody' of [the DHS] within the meaning of the habeas corpus statute." *Jones v. Cunningham*, 371 U.S. 236, 243 (1963).

JURISDICTION

13. This court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause), and the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et. seq*.

14. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et. seq*., the Declaratory Judgment Act, 28 U.S.C. § 2201 *et. seq*., the All Writs Act, 28 U.S.C. § 1651, and the Immigration and Nationality Act, 8 U.S.C. § 1252(e)(2).

15. 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). For immigration habeas petitions "jurisdiction lies in only one district: the district of confinement." *Lopez-Arevelo v Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828,

at *5 (W.D. Tex. Sept 22. 2025) (citing *Trump v. J.G.G.*, 604 U.S. 670, 672, 145 S. Ct. 1003, 221 L. Ed. 2d 529 (2025).

VENUE

16. Generally, a habeas petition should be filed in the "district of confinement." *Rumsfeld v. Padilla*, 542 U.S. 426, 428, 124 S. Ct. 2711, 2714, 159 L.Ed.2d 513 (2004). No exceptions to venue apply in this case. Venue is properly before this Court because Petitioner is detained in El Paso, Texas, at the ERO El Paso Camp East Montana Detention Facility, within the judicial district and division of this Court. 28 U.S.C. § 1391(b), (e)(1).

EXHAUSTION OF ADMINISTRATIVE REMEDIES

17. Administrative exhaustion is unnecessary as it would be futile. The Court of Appeals for the Fifth Circuit has explained that "exceptions to the exhaustion requirement are appropriate where the available administrative remedies are unavailable or wholly inappropriate to the relief sought, or where an attempt to exhaust such remedies would itself be a patently futile course of action." *Fuller v. Rich*, 11 F.3d 61, 62 (5th Cir. 1994) (quoting *Hessbrook v. Lennon*, 777 F.2d 999, 1003 (5th Cir. 1985)).

18. It would be futile for Petitioner to seek a custody redetermination hearing before an immigration judge because of the Board of Immigration Appeals ("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 (BIA 2025); *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).

19. Further, as the court recognized in *Buenrostro-Mendez v. Bondi*, 2025 WL 2886346 at

* 3 (S.D. Tex 2025) "exhaustion does not bar this court's review because it is not a statutory requirement in these circumstances. *Lopez Benitez v. Francis*, 25 Civ. 5937, 2025 WL 2371588, at *13 (S.D.N.Y. Aug. 13, 2025). When a "'legal question is fit for resolution and delay means hardship,' a court may choose to decide the issues itself." *Pizarro Reyes*, 2025 WL 2609425, at *3 (quoting *Shalala v. Ill. Council on Long Term Care, Inc.*, 529 U.S. 1, 13 (2000)). The issue here largely "boils down to a matter of statutory interpretation," which "belong[s] historically within the province of the courts." *Id.* Other courts faced with similar issues have found that preventing six months or more of unlawful detention (bond determinations typically take six months or more) outweighs the BIA's interest in detaining an individual while his or her bond determination is resolved on appeal. *Id.*; See also *Lopez-Arevelo v. Ripa*, No. EP-25-cv-337, 2025 WL 2691828, at *6 (W.D. Tex. Sep. 22, 2025) (waiving exhaustion in a similar case because "[t]o wait, indefinitely, for a ruling on that appeal would be inappropriate because it would exacerbate [the petitioner's] alleged constitutional injury—detention without a bond hearing")".

20. 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. See *Reno v Amer.-Arab Anti-Discrim. Comm.*, 525 U.S. 471, 119 S.Ct. 936, 142 L.Ed.2d 940 (1999) (finding exhaustion to be a "futile exercise because the agency does not have jurisdiction to review" constitutional claims); See also *Petgrave v. Aleman*, 529 F. Supp. 3d 665, 672 (S.D. Tex. 2021) (finding exhaustion futile because the agency cannot answer the constitutional question whether due process vests Petitioner with the right to immediate release or a bond hearing in federal court).

PARTIES

21. Petitioner is a native and citizen of Venezuela. Petitioner is presently detained at ERO

El Paso Camp East Montana Detention Facility, located in El Paso, Texas.

22. Respondent Warden is sued in his official capacity as Warden of the ERO El Paso Camp East Montana Detention Facility. In his official capacity, Respondent Warden is Petitioner's immediate custodian.

23. Respondent Mary De Anda-Ybarra is sued in her official capacity as Field Office Director, El Paso Field Office, Enforcement and Removal Operations, ICE. In her official capacity, Respondent Anda-Ybarra is the legal custodian of Petitioner.

24. Respondent Todd M. Lyons is sued in his official capacity as Acting Director of ICE. As the Acting Director of ICE, Respondent Lyons is a legal custodian of Petitioner.

25. Respondent Kristi Noem is sued in her official capacity as Secretary of Homeland Security. As the head of the U.S. Department of Homeland Security, the agency tasked with enforcing immigration laws, Secretary Noem is Petitioner's ultimate legal custodian.

26. Respondent Pamela Jo Bondi is sued in her official capacity as the Attorney General of the United States. As Attorney General, she has authority over the Department of Justice and is charged with faithfully administering the immigration laws of the United States including immigration bond hearings.

FACTUAL AND PROCEDURAL BACKGROUND

27. Petitioner DIEGO ARMANDO CALCURIAN MOROS is a native and citizen of Venezuela. He entered on September 6, 2022, without inspection and has not left since.

28. U.S. Border Patrol agents apprehended Petitioner near Eagle Pass, Texas on September 6, 2022. Exhibit P-2, [Notice to Appear].

29. On September 20, 2022, the Petitioner was released from detention with ICE Form I-220A, Order of Release on Recognizance, pursuant to 8 U.S.C. § 1226(a). Exhibit P-3, [Order of

Release on Recognizance].

30. Petitioner is currently detained at the ERO El Paso Camp East Montana Detention Facility at 6920 Digital Road, El Paso, Texas 79936. Exhibit P-1, [ICE Detainee Locator Results].

31. Petitioner is currently in immigration removal proceedings He is scheduled for a hearing before the detained immigration court in El Paso, Texas on December 31, 2025.

32. Petitioner has an application for Asylum and Withholding of Removal pending before the EOIR.

33. ICE detained Petitioner on September 19, 2025, during his ICE reporting check-in at the Dallas ICE Field Office. While the reason as to why ICE decided to detain Petitioner is unclear, Petitioner does not have a criminal record and has faithfully reported to all his scheduled ICE check-ins.

34. On September 5, 2025, the BIA issued the decision, *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Exhibit P-4, [Matter of Yajure Hurtado]. This decision, for the first time in immigration history, proclaimed that any person who crossed the border unlawfully and is later taken into immigration detention is no longer eligible for release on bond.

35. Before September 5, 2025, just 3 months prior, the position of the BIA was that the Immigration Judge had power to grant release on bond under INA section 236(a) if the person did not have a disqualifying criminal record and the judge was satisfied, after a hearing, that the person was not a danger to the community or a flight risk. *Matter of Akhmedov*, 29 I&N Dec. 166 (BIA 2025).

36. Moreover, ICE had a longstanding practice of treating noncitizens taken into custody while living in the United States as detained pursuant to 8 U.S.C. section 1226(a). See *Rocha Rosado v. Figueroa*, 2025 WL 2337099, (D. Arizona August 11, 2025). However, this position

changed on July 8, 2025, when internal "interim guidance" was released regarding a change in their longstanding interpretation of which noncitizens are eligible for release on bond. Exhibit P-5, [Interim Guidance]. Specifically, ICE is arguing that only those already admitted to the U.S. are eligible to be released from custody during their removal proceedings, and that all others are subject to mandatory detention under 8 U.S.C. § 1225, instead of 8 U.S.C. § 1226, and will remain detained with only extremely limited parole options at ICE's discretion. *Id.*

37. Petitioner's continued detention separates him from his family, prohibits him from being able to financially provide for his family, and inhibits his removal defense in many ways, including by making it difficult to communicate with witnesses, gathering evidence, and afford legal representation, among other related harm.

38. Despite having previously had the opportunity to seek a request for bond redetermination and release from custody prior to September 5, 2025, Petitioner now must remain detained, away from his family, counsel, and support system and continues to be subjected to the aforementioned harms.

39. Because Respondent's removal proceedings remain pending and he does not have a hearing scheduled until the end of December, there is little likelihood that Petitioner's removal will occur in the reasonably foreseeable future.

LEGAL BACKGROUND AND ARGUMENT

Due Process Clause

40. "It is well established that the Fifth Amendment entitles aliens 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).

41. In the immigration context, the Supreme Court has addressed two purposes for civil detention: preventing flight and danger to the community. *Zadvydas*, 533 U.S. at 690.

42. "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) (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)). In this case, to determine the due process to be afforded to Petitioner, the 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.

Detention Provisions under the Immigration and Nationality Act

43. The INA is codified at Title 8 of the United States Code, Section 1221 *et seq.*, and controls the United States Government's authority to detain noncitizens during their removal proceedings.

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

45. 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).

46. 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).

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

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

49. 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, 300-582 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).

50. Following the enactment of the IIRIRA, the EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered 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. 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).

51. The legislative history behind § 1226 also demonstrates that it governs noncitizens, like Petitioner, who were deemed inadmissible upon inspection at the border, released into the United States at the border after being placed into removal proceedings, and were present in the United States for a number of years prior to being taken into detention. Before passage of the Immigration

Reform and Immigrant Responsibility Act ("IRIRA"), the predecessor statute to § 1226(a) governed deportation proceedings for all noncitizens arrested within the United States, and like § 1226(a), included a provision allowing for discretionary release on bond. See 8 U.S.C. § 1252(a)(1) (1994).[1] After passing the IIRIRA, Congress declared the new § 1226(a) "restates the current provisions in [the predecessor statute] regarding the authority of the Attorney General to arrest, detain, and release on bond" a noncitizen "who is not lawfully in the United States." H.R. Rep. No. 104-469, pt. 1, at 229. See also H.R. Rep. No. 104-828, at 210. Because noncitizens like Petitioner were entitled to discretionary detention under § 1226(a)'s predecessor statute, and Congress declared the statute's scope unchanged by IIRIRA, the Court should interpret § 1226 to allow for a discretionary release on bond for noncitizens in a situation similar to Petitioner.

52. On July 8, 2025, ICE, "in coordination with" DOJ, announced a new policy that rejected well-established understanding of the statutory framework and reversed decades of practice.

53. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission," claims that all persons who entered the United States without inspection shall now be subject to mandatory detention provision 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 decades.

54. On September 5, 2025, the BIA issued a precedential decision adopting this interpretation, departing from the INA's text, federal precedent, and existing regulations. See

[1] See 8 U.S.C. § 1252(a)(1) (1994) ("Pending a determination of deportability...any [noncitizen]...may, upon warrant of the Attorney General, be arrested and taken into custody."); Hose v. Immigration & Naturalization Serv., 180 F.3d 992, 994 (9th Cir. 1999)(noting a "deportation hearing" was the "usual means" of proceeding against an alien physically in the United States).

Matter of Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025).

55. This decision ignores decades of immigration law and precedent by the Supreme Court, as well as the policies and procedures that had been in place before EOIR for more than 30 years.

56. In *Jennings v. Rodriguez*, the Supreme Court analyzed the statutory sections in question, 8 U.S.C. section 1225 and 8 U.S.C. 1226. 583 U.S. at 287. The Court held that section 1225(b) "applies primarily to aliens seeking entry into the United States." *Id.* at 297 Then, the Court noted that section 1226 "applies to aliens already present in the United States." *Id.* at 303.

57. The Court specifically found that "Section 1226(a) creates a default rule for those aliens by permitting- but not requiring- the Attorney General to issue warrants for their arrest and detention pending removal proceedings. Section 1226(a) also permits the Attorney General to release those aliens on bond, 'except as provided in subsection (c) of this section.'" (subsection pertains to aliens who fall into categories involving criminal offenses or terrorist activities). *Id.* "Federal regulations provide that aliens detained under §1226(a) receive bond hearings at the outset of detention." *Id.* at 306; 8 CFR 236.1(d)(1), 1236.1(d)(1).

58. The Supreme Court's analysis in *Jennings* demonstrates the difference between detention of arriving aliens who are seeking entry into the United States under section 1225 and the detention of those who are already present in the United States under section 1226.

59. The BIA's erroneous interpretation of the INA defies the plain text of 8 U.S.C. §§ 1225 and 1226. A key phrase in § 1225 states that "[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 v. Hyde*, 792 F. Supp. 3d 211, 214 (D. Mass. 2025).

60. The "seeking admission" language, "necessarily implies some sort of present-tense action." *Id.* At 218; *see also Matter of M- D-C-V-*, 28 I&N Dec. 18 (BIA 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 a verb tense is significant in construing statutes.").

61. "[E]very clause and word of a statute should have meaning." *United States ex rel. Polansky, M.D. v. Exec. Health Res., Inc.*, 599 U.S. 419, 432 (2023) (internal quotation marks and citation omitted). And "the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." *Gundy v. United States*, 588 U.S. 128, 141 (2019) (quotation omitted).

62. The *Matter of Yajure Hurtado* decision requires the Court to ignore critical provisions of the INA and it also renders portions of the newly enacted provisions of the INA superfluous. "When Congress amends legislation, courts must presume it intends the change to have real and substantial effect." *Van Buren v. United States*, 593 U.S. 374, 393 (2021) (quoting Ross v. Blake, 578 U.S. 632, 641-642, (216)).

63. 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).

64. This Court is not required, and should not, give deference to *Matter of Yarjure-Hurtado*. In *Loper Bright*, the Supreme Court was clear that "[c]ourts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority," and indeed "may not defer to an agency interpretation of the law simply because a statute is ambiguous." *Loper Bright v. Raimondo*, 603 U.S. 369, 412 (2024). Rather, 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. This Court should find, in accordance with numerous district courts within the Fifth Circuit and nationwide, that applying section 1225(b)(2)(A) to all noncitizens present in the United States without admission: disregards the plain meaning of section 1225(b)(2)(A); disregards the relationship between sections 1225 and 1226; disregards the effect of a recent amendment to section 1226(c); and conflicts with decades of prior statutory interpretation and practice. See *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Lopez Santos v. Noem*, 2025 WL 2642278 (W.D. La. Sept. 11, 2025); *Ventura Martinez v. Trump*, (W.D. La. Oct. 22, 2025); *Lopez-Arevelo v. Ripa*, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Gonzalez Martinez v. Noem*, 2025 WL 2965859 (W.D. Tex. Oct. 21, 2025); *Erazo Rojas v. Noem et al.*, No. 3:25-cv-00443 (W.D Tex. Oct. 30, 2025); *Buenrostro Mendez v. Bondi*, 2025 WL 2886346 (S.D. Tex. Oct. 7, 2025); *Padron Covarrubias v. Vergara*, 5:25-CV-112 (S.D. Tex. Oct. 8, 2025); See also Inspection and Expedited Removal of Aliens, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) (explaining that "[d]espite 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").

65. By specifically referencing inadmissibility for entry without inspection under 8 U.S.C. § 1182(6)(A), Congress made clear that such individuals are otherwise covered by § 1226(a). Thus, § 1226 plainly applies to noncitizens charged as inadmissible, including those present without admission or parole.

66. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like Petitioner, who were encountered at the border and released after a quasi-judicial determination by an immigration official on a form I-220A that Petitioner falls under the discretionary arrest provision of § 1226(a) as an uninspected entrant. The Government's own issuance of an I-220A placing Petitioner in custody under 8 U.S.C. § 1226(a) reflects a discretionary, fact-based determination that Petitioner was not subject to mandatory detention under § 1225(b)(2)(A). This quasi-judicial decision was made by the Department of Homeland Security ("DHS") at the outset of proceedings, based on the facts available to both parties and Petitioner's own admissions. Critically, DHS itself alleged in the Notice to Appear that Petitioner "entered the United States without inspection and without parole or lawful admission," a factual assertion that squarely contradicts the Government's current position—adopted wholesale by the BIA—that Petitioner is ineligible to apply for bond before EOIR. This reversal undermines the integrity of the adjudicative process and triggers the principles of issue preclusion recognized in *B&B Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. 138 (2015), which require courts to respect agency determinations when the ordinary elements of preclusion are met.

67. It has been the settled practice for decades for immigration officials to issue an I-220A, or an Order of Release on Recognizance, to those who encounter immigration officials at or near the border. The issuance of an I-220A under § 236 is not a ministerial act but a formal adjudication

of custody status, reflecting DHS's determination that the individual falls under the discretionary detention framework of § 236 rather than the mandatory detention provisions of § 235(b).

68. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to Petitioner.

FIRST CAUSE OF ACTION

Violation of Fifth Amendment Right to Due Process

69. Petitioner restates and realleges paragraphs 1 to 68 as if fully set forth herein.

70. The Fifth Amendment's Due Process Clause prohibits the federal government from depriving any person of "life, liberty, or property, without due process of law." U.S. Const. Amend. V.

71. The Supreme Court has repeatedly emphasized that the Constitution generally requires a hearing before the government deprives a person of liberty or property. *Zinermon v. Burch*, 494 U.S. 113, 127 (1990).

72. Under the *Mathews v. Eldridge*,[2] framework, the balance of interests strongly favors Petitioner's release.

73. Petitioner's private interest in freedom from detention is profound. The interest in being free from physical detention is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004); *see also Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) ("Freedom from

[2] *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). The Fifth Circuit follows the Supreme Court's framework announced in *Mathews v. Eldridge*, which established that procedural due process requirements are determined by balancing three distinct factors: "first, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Meza v. Livingston*, 607 F.3d 392 (5th Cir. 2010).

imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.").

74. The risk of erroneous deprivation is exceptionally high. Petitioner has never been convicted of any crime, regularly reported to all his ICE check-ins, has work authorization, and has family ties to the community which include a five-month old U.S. citizen child. Therefore, Petitioner does not pose a danger to the community and is not a flight risk.

75. The government's interest in detaining Petitioner without due process is minimal. Immigration detention is civil, not punitive, and may only be used to prevent danger to the community or ensure appearance at immigration proceedings. *See Zadvydas*, 533 U.S. at 690.

76. Furthermore, the "fiscal and administrative burdens" of providing Petitioner with a bond hearing are minimal, particularly when weighed against the significant liberty interests at stake. *See Mathews*, 424 U.S. at 334–35.

77. For these reasons, Petitioner's detention violates the Due Process Clause of the Fifth Amendment.

SECOND CAUSE OF ACTION

Violation of the Immigration and Nationality Act

78. Petitioner restates and realleges paragraphs 1 to 68 as if fully set forth herein.

79. Petitioner is being detained pursuant to authority contained in section 236 of the INA; section 236 is codified at 8 U.S.C. § 1226.

80. Despite this, the BIA issued *Matter of Yajure Hurtado* on September 5, 2025, preventing Petitioner's ability to request a bond redetermination from the Judge.

81. 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.

82. The BIA has wrongfully issued its decision in *Matter of Yajure Hurtado* finding all noncitizens, such as the Petitioner, are subject to mandatory detention under § 1225(b)(2).

83. The unlawful application of § 1225(b)(2) to Petitioner violates the INA and forecloses the EOIR's ability to consider Petitioner's release on bond.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court will:

(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 cause why his Petition should not be granted within three days;

(4) Declare that Petitioner's detention is unlawful;

(5) 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; and

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

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Respectfully Submitted,

/s/Roy Petty
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Attorney for the Petitioner

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

I represent the Petitioner, Diego Armando Calcurian Moros, and submit this verification on his behalf. I hereby verify under penalty of perjury that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge. 28. U.S.C.§ 2242.

Dated the 5th day of December 2025.

/s/ Roy Petty
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