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

MEDARDO DAVID CUELLAR-HIDALGO, Petitioner, - against - REYNALDO CASTRO, IN HIS OFFICIAL CAPACITY, WARDEN, SOUTH TEXAS DETENTION CENTER South Texas Detention Center; SYLVESTER ORTEGA, IN HIS OFFICIAL CAPACITY, ACTING DIRECTOR OF SAN ANTONIO FIELD OFFICE , U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; TODD LYONS, IN HIS OFFICIAL CAPACITY ACTING DIRECTOR, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT (ICE); KRISTI NOEM, IN HER OFFICIAL CAPACITY SECRETARY OF US DEPARTMENT OF HOMELAND SECURITY; PAMELA BONDI, IN HER OFFICIAL CAPACITY, U.S. ATTORNEY GENERAL Respondents.	**PETITION FOR WRIT OF HABEAS CORPUS** Case No. 5:25-CV-1696

INTRODUCTION

1. This case concerns the unlawful arrest and unlawful detention of Petitioner, Medardo David Cuellar-Hidalgo ("Mr. Cuellar-Hidalgo"), a twenty-seven-year-old citizen and

national of Honduras. Mr. Cuellar-Hidalgo entered the United States on or about October 22, 2006, as a (9) year-old boy. He has been in the United States continuously from that date onward and on December 28, 2012, was granted Special Immigrant Juvenile Status ("SIJS"). At the time of his arrest on June 17, 2025, he had deferred action. He initially requested a bond, which the immigration judge granted in the amount of $10,000. However, on DHS's appeal, the Board of Immigration Appeals ("BIA") determined that he was subject to mandatory detention under 8 U.S.C. § 1225(b)(2), and that the Immigration lacked jurisdiction to consider bond per *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

2. Mr. Cuellar-Hidalgo has resided in this country for close to (2) decades. He has (2) minor U.S. citizen children. The(4) year-old child, [redacted], was born on [redacted], in Orange Park, Clay County, Florida. The (9) year-old child, [redacted], was born on [redacted], in Jacksonville, Duval County, Florida. His mother, a few aunts and uncles, and his (2) siblings also live in the United States.
3. Mr. Cuellar-Hidalgo's immigration arrest stemmed from a traffic stop on June 03, 2025. Mr. Cuellar-Hidalgo was arrested in St. Johns County, Florida, by a local sheriff for driving without a license. On June 04, 2025, the St. Johns County Sheriff's Office contacted ERO Miami, Jacksonville CAP unit regarding the Petitioner's arrest, which resulted in subsequent mandatory detention by ICE and is wholly unjustified and unrelated to any individualized consideration of Mr. Cuellar-Hidalgo's circumstances and granted SIJS status and deferred action. At the time of his arrest and detention, Mr. Cuellar-Hidalgo had lived in the United States for more than (19) years.

4. The typical detention authority for non-citizens like Mr. Cuellar-Hidalgo, who had been living in the country for about two decades, and placed into what is commonly referred to as Section 240 proceedings governed by 8 U.S.C. § 1229a, is section 1226(a) detention.
5. Yet, despite being granted a bond on July 28, 2025, DHS has continued to detain him on the basis that he is subject to mandatory detention.
6. Everyday Mr. Cuellar-Hidalgo spends in immigration custody, he and his children are subjected to further irreparable harm. Immediate relief is necessary to ensure that he is no longer subjected to continued violations of his substantive and procedural rights. To this, Petitioner requests that this Court order DHS to release him on the bond determination dated July 28, 2025.

JURISDICTION & VENUE

7. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus) and 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*.
8. Venue is proper because Petitioner was detained in Texas and remains detained at the South Texas Detention Facility. See ICE Detainee Locator; *See also generally Rumsfeld v. Padilla*, 542 U.S. 426, 447 (2004) (generally, "[w]henever a § 2241 habeas petitioner seeks to challenge his present physical custody within the United States," he must file the petition in the district of confinement and name his immediate custodian as the respondent).

EXHAUSTION OF ADMINISTRATIVE REMEDIES

9. Under the INA exhaustion of administrative remedies is only required by Congress for appeals on final orders of removal." *Garza-Garcia v. Moore*, 539 F. Supp.2d 899, 904 (S.D. Tex. 2007); *see* 8 U.S.C. § 1252(d)(1)("A court may review a final order of removal only if…the [noncitizen] has exhausted all administrative remedies."). Petitioner has fully exhausted all statutorily required administrative remedies. Specifically, the Immigration Judge initially granted Petitioner bond; the Department of Homeland Security subsequently appealed that determination to the Board of Immigration Appeals; Petitioner filed a responsive brief opposing DHS's appeal; and the BIA ultimately sustained DHS's appeal and vacated the bond grant.

10. Therefore, there is no more administrative exhaustion necessary as it would be futile. *See, e.g., Aguilar v. Lewis*, 50 F. Supp. 2d 539, 542–43 (E.D. Va. 1999).

11. Moreover, Petitioner was granted a bond in the amount of $10,000, and the Board of Immigration Appeals ("BIA") sustained DHS's appeal of no bond due to its 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 further exhaustion futile).

PARTIES

12. Petitioner Mr. Medardo David Cuellar-Hidalgo is a citizen and national of Honduras. He has been detained since June 13, 2025, and currently remains in ICE custody and detained at the South Texas Detention Facility at 566 Veterans Drive, Pearsall, TX 78061.

13. Respondent Kristi Noem is named in her official capacity as the Secretary of Homeland Security in the United States Department of Homeland Security. In this capacity, she is responsible for the administration of immigration laws pursuant to Section 103(a) of the INA, 8 U.S.C. § 1103(a) (2007); routinely transacts business in the District of Texas; is legally responsible for pursuing any effort to detain and remove the Petitioner; and as such is a custodian of the Petitioner. At all times relevant hereto, Respondent Noem's address is U.S. Department of Homeland Security, Office of the General Counsel, 2707 Martin Luther King Jr. Ave. SE, Washington, DC 20528-0485.
14. Respondent Todd M. Lyons is named in his official capacity as the Acting Director of ICE. He administers and enforces the immigration laws of the United States, routinely conducts business in the District of Texas, Laredo Division, is legally responsible for pursuing efforts to remove the Petitioner, and as such is the custodian of the Petitioner. At all times relevant hereto, Respondent Lyons's address is ICE, Office of the Principal Legal Advisor, 500 12th St. SW, Mail Stop 5900, Washington DC 20536-5900.
15. Respondent, Bobby Thompson, is the warden at the South Texas Detention Center, where the petitioner is detained. He has immediate physical custody of Petitioner. He is sued in his official capacity.
16. Respondent, Sylvester Ortega, is ICE Field Officer Director of Detention and Removal. Respondent Vergara 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 Vergara's orders, Petitioner remains behind bars.

LEGAL BACKGROUND

17. Section 2241 of 28 United States Code provides in relevant part that "[w]rits of habeas corpus may be granted by . . . the district courts within their respective jurisdictions" when a petitioner "is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(a), (c)(3); *see also* I.N.S. v. St. Cyr, 533 U.S. 289, 305, 121 S. Ct. 2271 (2001).

18. District courts grant writs of habeas corpus to those who demonstrate their custody violates the Constitution or laws of the United States. 28 U.S.C. § 2241(c)(3).

19. Habeas corpus "entitles [a] prisoner to a meaningful opportunity to demonstrate that he is being held pursuant to 'the erroneous application or interpretation' of relevant law." Boumediene v. Bush, 553 U.S. 723, 779, 128 S. Ct. 2229 (2008) (*quoting*, St. Cyr, 533 U.S. at 302.

20. The Fifth Amendment's Due Process Clause protects the right of all persons to be free from "depriv[ation] of life, liberty, or property, without due process of law." U.S. Const. amend. V.

21. "It is well established that the Fifth Amendment entitles aliens to due process of law[.]" Trump v. J. G. G., 604 U.S. ---, 145 S. Ct. 1003, 1006 (2025) (*quoting* Reno v. Flores, 507 U.S. 292, 306, 113 S. Ct. 1439 (1993)).

22. "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, 533 U.S. at 690.

23. The INA prescribes three basic mechanisms for detention for non-citizens, 8 U.S.C. § 1225, for arriving aliens and applicants for admission, § 1226 the default detention statute, and § 1231 for post–final order detention.

24. 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).

25. Following the enactment of the IIRIRA, the U.S. Department of Justice's Executive Office of Immigration Review ("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 (formed referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination").

26. Thus, in the decades that followed, most people who entered without inspection and were thereafter detained and placed in standard removal proceedings were considered for release on bond and also received bond hearings before an Immigration Judge ("IJ"), unless their criminal history rendered them ineligible. That practice was consistent with many more decades of prior practice, in which noncitizens who had entered the United States, even if without inspection, were entitled to a custody hearing before an IJ or other hearing officer. In contrast, those who were stopped at the border were only entitled to release on 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)).

27. For decades, residents of the U.S. who entered without inspection and were subsequently apprehended by ICE in the interior of the country have been detained pursuant to § 1226 and entitled to bond hearings before an IJ, unless barred from doing so due to their criminal history.

28. On July 8, 2025, however, DHS stated a new position with regard to custody determinations as follows:

> An "applicant for admission" is an alien present in the United States who has not been admitted or who arrives in the United States, whether or not at a designated port of arrival. INA § 235(a)(1). **Effective immediately, it is the position of DHS that such aliens are subject to detention under INA § 235(b) and may not be released from ICE custody except by INA § 212(d)(5) parole**. These aliens are also ineligible for a custody redetermination hearing ("bond hearing") before an immigration judge and may not be released for the duration of their removal proceedings absent a parole by DHS. For custody purposes, these aliens are now treated in the same manner that "arriving aliens" have historically been treated. **The only aliens eligible for a custody determination and release on recognizance, bond, or other conditions under INA § 236(a) during removal proceedings are aliens admitted to the United States and chargeable with deportability under INA § 237, with the exception of those subject to mandatory detention under INA § 236(c).**
>
> Moving forward, ICE will not issue Form I-286, Notice of Custody Determination, to applicants for admission because Form I-286 applies by its terms only to custody determinations under INA § 236 and part 236 of Title 8 of the Code of Federal Regulations. With a limited exception for certain habeas petitioners, on which the Office of the Principal Legal Advisor (OPLA) will individually advise, if Enforcement and Removal Operations (ERO) previously conducted a custody determination for an applicant for admission still detained in ICE custody, ERO will affirmatively cancel the Form I-286. *See* https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-forapplications-for-admission (emphasis original).

29. As a result, according to DHS all noncitizens who have entered the United States without

inspection and are subject to the grounds of inadmissibility, including long-time U.S. residents, are now considered to be subject to mandatory detention under INA § 235(b) and ineligible for release on bond. Conversely, according to DHS "[t]he only aliens eligible for a custody determination and release on recognizance, bond, or other conditions under INA § 236(a) during removal proceedings are aliens admitted to the United States and chargeable with deportability under INA § 237, with the exception of those subject to mandatory detention under INA § 236(c)." *Id.*

30. Prior to July 8, 2025, the predominant form of detention authority for anyone arrested in the interior of the United States was 8 U.S.C. § 1226(a).

31. Further, the Petitioner in this case was granted a SIJS on December 28, 2012. The October 2025 Visa Bulletin designates "Certain Special Immigrants" as category EB-4, with a priority date of "01JUL20" indicating the Petitioner has a current visa available to adjust status, as his priority date is August 22, 2012.

32. DHS alleges no violation of law that makes Petitioner deportable or inadmissible, solely charging him as being "an alien present … who arrived in the United States at any time and place other than as designated by the Attorney General". INA § 212(a)(6)(A)(i). Petitioner's criminal history consists of three traffic violations for driving without a license. He pled *nolo contendere* to driving without a valid driving license on June 03, 2025, on February 12, 2025, and on June 18, 2024.

33. Petitioner has no other criminal allegations or convictions during his entire 19 years of residency in the United States.

34. Petitioner's SIJS is not uncontested. It is also uncontested that he has not been charged with any criminal offenses that make him deportable or inadmissible. Therefore, Mr.

Cuellar-Hidalgo is not deportable, not inadmissible, and not "subject to removal" under INA § 212(a)(6)(A)(i), as charged by the DHS.

35. Congress created Special Immigrant Juvenile Status ("SIJS") to protect abused, neglected, or abandoned children and provide them a viable pathway to lawful permanent residency and, eventually, citizenship. Courts recognize that SIJS reflects Congress's intent to allow eligible children "to remain safely in the country with a means to apply for LPR status." *Garcia v. Holder*, 659 F.3d 1261, 1271 (9th Cir. 2011); *accord C.J.L.G. v. Barr*, 923 F.3d 622, 626 (9th Cir. 2019) (en banc); *Osorio-Martinez v. Att'y Gen.*, 893 F.3d 153, 168 (3d Cir. 2018).

36. The statutory history of SIJS confirms Congress's intent to keep beneficiaries safe from removal while they pursue lawful permanent residency. SIJS beneficiaries are expressly exempt from specified grounds of deportability. *See* 8 U.S.C. § 1227(c) (stating that certain § 1227(a) deportability grounds "shall not apply" to SIJS recipients based on pre-SIJS circumstances).

37. SIJS beneficiaries are also exempt from key grounds of inadmissibility when seeking adjustment of status, and several other inadmissibility grounds may be waived. *See* 8 U.S.C. § 1255(h)(2); *see also* 8 C.F.R. § 245.1(e)(3). These exemptions shield SIJS youth from removal where such grounds would ordinarily make a noncitizen removable or ineligible for adjustment.

38. Due to these statutory exemptions, an SIJS beneficiary may remain in the United States and adjust status regardless of prior manner of entry, lack of valid entry documents, or potential "public charge" concerns. *See* 8 U.S.C. § 1255(h)(2)(A) (exempting § 1182(a)(4), (6)(A), (7)(A)); *Osorio-Martinez*, 893 F.3d at 168.

39. Critically, SIJS beneficiaries "shall be deemed … to have been paroled into the United States." 8 U.S.C. § 1255(h)(1); 8 C.F.R. § 1245.1(a). This statutory parole deeming further reinforces Congress's intent that SIJS recipients remain in the United States while pursuing lawful status. *See Joshua M. v. Barr*, 439 F. Supp. 3d 632, 678–79 (E.D. Va. 2020).

40. In this case, Petitioner was charged in the NTA under INA § 212(a)(6)(A)(i) as a noncitizen "who arrived in the United States at any time or place other than as designated by the Attorney General." While Petitioner did originally enter without inspection, the § 212(a)(6)(A)(i) charge is legally inapplicable to SIJS beneficiaries. INA § 245(h)(2)(A) expressly exempts SIJS recipients from this inadmissibility ground. Thus, the charge cannot sustain removability for a noncitizen granted SIJS.

41. Moreover, The NTA does not allege, and the record contains no evidence of, any criminal conduct or other deportable offenses that would make Petitioner removable notwithstanding SIJS protections. *See* INA § 245(h)(2)(B); 8 C.F.R. § 245.1(e)(3). Corresponding deportability grounds are likewise waived under INA § 237(c) for SIJS recipients.

42. As a result, SIJS beneficiaries, such as Mr. Cuellar-Hidalgo, are protected from removal under 8 U.S.C. § 1227(c) and permitted to remain in the United States while awaiting adjustment of status. These statutory protections apply regardless of his manner of entry or the § 212(a)(6)(A)(i) charge listed in the NTA.

43. Because the SIJS exemptions eliminate the effect of the charge in the NTA, and because Petitioner has not committed any removable or inadmissible offense, he is not "subject to removal" as charged. Whether he adjusts now or remains in SIJS status, the statutory

framework shields him from removal and preserves his eligibility for lawful permanent residency.

44. Petitioner's SIJS also provides him with enhanced due process rights. *See* Rodriguez, 2024 WL 4024047, at *5 (citing *Osorio-Martinez*, 893 F.3d at 168-171). Immigration detention must always "bear[] a reasonable relation to the purpose for which the individual was committed." Demore v. Kim, 538 U.S. 510, 527 (2003) (citing *Zadvydas*, 533 U.S at 690).

45. Under § 1226(a) the Attorney General may release a detainee on bond on the authority of ICE or by an Immigration Judge. There are standards for release: bond is available if the detainee "demonstrate[s] . . . that such release would not pose a danger to property or persons, and that [he] is likely to appear for any future proceeding." 8 C.F.R. § 36.1(c)(8). "[T]he immigration judge is authorized to exercise the authority . . . to detain the alien in custody, release the alien, and determine the amount of bond." Id. § 236.1(d)(1). If denied release at the initial bond hearing, a § 1226(a) detainee may request a custody redetermination hearing before an IJ. That request will "be considered only upon a showing that the alien's circumstances have changed materially." *Id.* § 1003.19(e).

46. As a result, any "[r]elease" of a noncitizen "reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk." *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018).

47. Since the IJ has found Petitioner not to be a flight risk or a danger to his community, has SIJS, and a visa currently available, his detention is not reasonably related to its purpose and thereby violates his due process rights.

48. The Due Process Clause of the Fifth Amendment states fundamental constitutional principles: "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). And those due process protections extend to "all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) (quoting *Zadvydas*, 533 U.S. at 693).

49. "The touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), including "the exercise of power without any reasonable justification in the service of a legitimate government objective," *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998). Due process requires that all forms of civil detention—including immigration detention—bear a "reasonable relation" to a non-punitive purpose. *See Jackson v. Indiana*, 406 U.S. 715, 738 (1972).

50. The Supreme Court has recognized only two permissible non-punitive purposes for immigration detention: ensuring a noncitizen's appearance at immigration proceedings (or, in the case of a removal order, at removal); and preventing danger to the community. *Zadvydas*, 533 U.S. at 690-92; *see Demore v. Kim*, 538 U.S. 510, 519-20, 527–28, 531 (2003). It has also held that, in general, these purposes may not be assessed on a blanket or categorical basis. Instead, immigration custody decisions generally must be based on an "individualized determination" of flight risk and danger to the community. *See INS v. Nat'l Ctr. for Immigrants' Rts., Inc.*, 502 U.S. 183, 194 (1991); *see also Zadvydas*, 533 U.S. at 690; *R.I.L-R v. Johnson*, 80 F. Supp. 3d 164, 188 (D.D.C. 2015).

51. All noncitizens living in the United States have a protected liberty interest in their ongoing freedom from confinement. *See* Zadvydas, 533 U.S. at 690.

52. At a minimum, due process requires "adequate procedural protections" to ensure that the Government's asserted justification for physical confinement "outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Id.* (internal quotation marks omitted).

53. In civil detention cases, the Supreme Court "repeatedly has recognized that civil commitment for any purpose constitutes a significant deprivation of liberty." Singh, 638 F.3d 1196, 1204-05 (9th Cir. 2011) (quoting Addington v. Texas, 441 U.S. 418, 425 (1979)) (emphasis in original).

54. Civil detention is impermissible without an individualized hearing before a neutral decision maker that tests the Government's justification for imprisonment. *See* United States v. Salerno, 481 U.S. 739, 750-51 (1987) (upholding civil pretrial detention of individuals charged with crimes only upon individualized findings of dangerousness or flight risk at custody hearings); Foucha v. Lousiana, 504 U.S. 71, 81-83 (1992) (requiring individualized finding of mental illness and dangerousness for civil commitment); Kansas v. Hendricks, 521, U.S. 346, 357 (1997) (upholding civil commitment of sex offenders after jury trial on lack of volitional control and dangerousness).

STATEMENT OF THE FACTS

55. Mr. Cuellar Hidalgo is a (27)year-old citizen and national of Honduras. Mr. Cuellar-Hidalgo entered the United States EWI on or about October 22, 2006, as a (9) year-old boy. He has been in the United States continuously from that date onward and on December 28, 2012, was granted Special Immigrant Juvenile Status ("SIJS"), has a

currently available visa and is eligible to adjust status. As an SIJS, the Respondent is not inadmissible, has been paroled into the United States, and is not deportable. He has resided in the United States continuously for more than 19 years.

56. Mr. Cuellar-Hidalgo has (2) minor U.S. citizen children. The four-year-old child, [redacted], was born on [redacted], in Orange Park, Clay County, Florida. The nine-year-old child, [redacted], was born on [redacted], in Jacksonville, Duval County, Florida. His mother, a few aunts and uncles, and his two siblings also live in the United States.

57. On June 03, 2025, Mr. Cuellar-Hidalgo was arrested in St. Johns County, Florida, at the traffic stop by a local sheriff for driving without license. On June 04, 2025, the St. Johns County Sheriff's Office contacted ERO Miami, Jacksonville CAP unit regarding the Petitioner's arrest, which resulted in subsequent mandatory detention by ICE and is wholly unjustified and unrelated to any individualized consideration of Mr. Cuellar-Hidalgo's circumstances and grants SIJS status. Mr. Cuellar-Hidalgo remains detained at the South Texas Detention Facility at 566 Veterans Drive, Pearsall, TX 78061. He has been detained for over 180 days.

58. Mr. Cuellar-Hidalgo's was issued a Notice to Appear ("NTA") on June 13, 2025, pursuant 8 U.S.C. § 1229a, and placed into what is commonly referred to as Section 240 proceedings. Under Section 240 proceedings, non-citizens like Mr. Cuellar-Hidalgo, are afforded procedural rights, including the ability to request a custody redetermination from an immigration judge, which he did.

59. On July 28, 2025, IJ Stuart Alcorn held a custody redetermination hearing (bond hearing), and granted Mr. Cuellar-Hidalgo a $10,000.00 bond with non-monetary

conditions. DHS filed an appeal and submitted its memorandum on September 12, 2025, arguing that the Petitioner is subject to detention under 8 U.S.C. § 1225(b)(2) and that the IJ erred in ordering the Petitioner released from DHS custody under §1226(a) because it had no jurisdiction to do so. On October 29, 2025, BIA sustained DHS's appeal and vacated the IJ's bond decision based on the *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 255 (BIA 2025), which held that Immigration Judges lack jurisdiction to consider bond requests for all aliens "who are present in the United States without admission" (quoting INA § 235(b)(2)(A), 8 U.S.C. § 1225 (b)(2)(A)). The Board also rejected the argument that aliens who are living in the United States without admission or lawful status are not "seeking admission". *Id.* At 221.

60. Immigration Judge Alcorn, however, noted in his decision that "the Court has jurisdiction to redetermine Petitioner's request for custody status … because … the Department's lack of any briefing to support their position that Petitioner is subject to mandatory detention … and because … precedentially courts have been issuing bonds in cases like the Petitioner's: those who have entered the United States illegally as children and remained in the country for over a decade". The IJ also found that the Petitioner has a significant motive to appear for his immigration proceedings, avoid deportation and is not a flight risk, not a danger given his extensive family ties in the United States, two minor U.S. citizen children, approved SIJ visa, family and community ties, and length in the United States.

61. On October 13, 2023,[1] the immigration judge denied Mr. Cuellar-Hidalgo's adjustment of status application based on his approved SIJ status. Petitioner timely filed an appeal with the Board of Immigration Appeals, which remains pending.

[1] The Immigration Judge's denial has an error as it lists the date of decision as October 31, 2023.

62. BIA has stripped Mr. Cuellar-Hidalgo of his due process rights by treating him as someone who *is* arriving pursuant to 8 U.S.C. § 1225(b). In recent weeks, courts across the country have held that this new, expansive interpretation of mandatory detention under the Immigration and Nationality Act ("INA") is incorrect.

63. Mr. Cuellar Hidalgo is being detained without the possibility of bond, even though an immigration judge found, correctly so, that bond was appropriate.

64. On July 8, 2025, DHS issued a new policy memorandum to all , On July 8, 2025, DHS issued a memo to all employees of Immigration and Customs Enforcement (Hereinafter "ICE") stating that "[t]his message serves as notice that DHS, in coordination with the Department of Justice (Hereinafter "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.

65. Through his approved SIJS and immigrant visa immediately available, Mr. Cuellar-Hidalgo will have the opportunity to become a lawful permanent resident, and his removal is not reasonably foreseeable due to a pending application for relief.

66. Mr. Cuellar-Hidalgo is detained at the South Texas Detention Facility at 566 Veterans Drive, Pearsall, TX 78061. He has been detained for over 180 days.

67. Mr. Cuellar-Hidalgo requested a custody re-determination from an immigration judge. The Immigration Judge granted him a bond in the amount of $10,000.00, which was appealed by DHS and sustained by BIA 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).

68. Petitioner's detention pursuant to § 1225(b)(2)(A) violates the plain language of the INA and its implementing regulations. Petitioner, who was apprehended in the interior of the U.S., should not be considered an "applicant for admission" who is "seeking admission." Rather, he should continue to be detained pursuant to 8 U.S.C. § 1226(a), which allows for release on conditional parole or bond.

69. Petitioner's detention pursuant to § 1225(b)(2)(A), is unlawful because revocations of release must comply with 8 U.S.C. § 1226(b).

70. Through this petition, Mr. Cuellar-Hidalgo asks this Court to find that Respondents have unlawfully detained him under § 1225(b)(2)(A), that his detention is appropriate under § 1226(a), which IJ Alcorn disagreed with in his $10,000.00 bond Order from August 22, 2025, reinstate $10,000.00 bond order and/or immediately release Mr. Cuellar Hidalgo from custody.

CLAIM FOR RELIEF

FIRST CLAIM FOR RELIEF
VIOLATION OF 8 U.S.C. § 1226(a)
UNLAWFUL DENIAL OF RELEASE ON BOND

71. Petitioner restates and realleges all paragraphs as if fully set forth here.

72. In June 2025, Mr. Cuellar-Hidalgo was arrested and taken into ICE custody even though he had a granted SIJS and immediate visa available to adjust status, is not inadmissible, not a danger, not a flight risk, has family and community stable job and two minor U.S. citizen children that he supports. Instead, DHS arrested and detained him under § 1225, stating that he is now subject to mandatory detention.

73. Petitioner may only be detained, if at all, pursuant to 8 U.S.C. § 1226(a).

74. Immigration Judge Alcorn has already made a custody determination under 8 U.S.C. § 1226(a) and ordered his release from detention on $10,000.00 bond.

75. Petitioner's continuing detention is therefore unlawful.

SECOND CLAIM FOR RELIEF

CONTINUED DETENTION CONSTITUTES A VIOLATION OF DUE PROCESS

76. Petitioner incorporates all factual allegations as though restated here.

77. DHS detained Mr. Cuellar-Hidalgo without reasonable suspicion and continues to do so in violation of his constitutional rights protected under the Fifth Amendment.

78. The Due Process Clause of the Fifth Amendment forbids the government from depriving any person of liberty without due process of law. U.S. Const. amend. V.

79. "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 [of the Fifth Amendment] protects." *Zadvydas*, 533 U.S. at 690.

80. Mr. Cuellar-Hidalgo's detention violates his Fifth Amendment rights for at least three related reasons.

81. First, immigration detention must always "bear[] a reasonable relation to the purpose for which the individual was committed." *Demore v. Kim*, 538 U.S. 510, 527 (2003) (*citing Zadvydas*, 533 U.S. at 690).

82. Whereas here, the government has failed to prove that Petitioner's detention is reasonably related to his SISJ case and Adjustment of Status and/or immigration proceedings.

83. Second, the Due Process Clause requires that any deprivation of Mr. Cuelar-Hidalgo's liberty be narrowly tailored to serve a compelling government interest. *See Reno v. Flores*, 507 U.S. 292, 301-02 (1993) (holding that due process "forbids the government to infringe certain 'fundamental' liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest"); *Demore*, 538 U.S. at 528 (applying less rigorous standard for "deportable aliens").

84. Petitioner's on-going imprisonment does not satisfy that rigorous standard as he did not commit any crime, specifically, he was charged with a misdemeanor, is not inadmissible, has close family and community ties, stable job, two minor U.S. citizen children, granted SIJS and immigrant visa available and has a pending Adjustment of Status case as his case is on direct appeal.

85. Third, "the Due Process Clause includes protection against unlawful or arbitrary personal restraint or detention." *Zadvydas*, 533 U.S. at 718 (2001) (Kennedy, J., dissenting).

86. Detaining Mr. Cuellar-Hidalgo was arbitrary because he had been initially processed for bond under § 1226, he is not inadmissible, has close family and community ties, stable job, two minor U.S. citizen children, granted SIJS and immigrant visa available, a pending Adjustment of Status, no criminal convictions, only a misdemeanor, is not a danger or a flight risk.

87. Mr. Cuellar-Hidalgo's initial court hearing took place under §1226(a), but for a new policy memorandum now subjecting everyone present in the United States who entered without a valid visa to mandatory detention, deprives the Petitioner of a release from custody under bond.

PRAYER FOR RELIEF

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

A. Assume jurisdiction over this matter;

B. Order Respondents to Show Cause why this Petition should not be granted within seventy-two hours;

C. Issue an Order preventing Respondents from removing Petitioner from the United States without notice and an opportunity to be heard;

D. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment;

E. Reinstate his $10,000.00 bond;

E. Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately;

F. Award reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412; and

G. Grant any further relief this Court deems just and proper.

Dated: December 09, 2025

Respectfully Submitted,

/s/ David H. Square

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

I represent Petitioner, Medardo David Cuellar Hidalgo, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing