UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION

NELSON ROSALES FORONDA (A[redacted]) *Petitioner*	
v.	Case No. 6:25-cv-576
KRISTI NOEM, in her official capacity as U.S. Secretary of Homeland Security; PAMELA JO BONDI, in her official capacity as Attorney General of the United States; TODD LYONS, Acting Director, U.S. Immigration and Customs Enforcement ("ICE") BRET BRADFORD, Field Office Director, ICE Houston Field Office; WARDEN, LIMESTONE COUNTY DETENTION CENTER, in his/her official capacity. *Respondents.*	**PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241**

INTRODUCTION

1. Petitioner Nelson Rosales Foronda ("Mr. Rosales") is a native and citizen of Bolivia who has resided in the United States since he first entered the country over twenty-three years ago. Over nearly a quarter of a century spent in the United States, Mr. Rosales and his lawful permanent resident wife have raised four children, two of whom are U.S. citizens. Mr. Rosales has dutifully paid taxes every year dating back to 2012 and runs a successful tile installation business with his wife in Maryland.
2. On or about September 17, 2025, Immigration and Customs Enforcement ("ICE") officers detained Mr. Rosales in Washington, DC and shipped him 1,400 miles away to Limestone County Detention Center.
3. Mr. Rosales remains detained without the opportunity to seek release on bond as the

Department of Homeland Security ("DHS") and the Executive Office of Immigration Review ("EOIR") insist that he is subject to mandatory detention under 8 U.S.C. § 1225(b)(2), arguing that Mr. Rosales is "seeking admission" into the country he has lived in, worked in, paid taxes in, and raised a family in for over twenty-three years.

4. DHS's interpretation of its detention authority under 8 U.S.C. § 1225(b)(2) marks a complete departure from the interpretation that the government has embraced since the statute's enactment, DHS's prior practice, Supreme Court precedent, and the statute's plain language.

5. This Court should grant Mr. Rosales's petition for writ of habeas corpus and order his release from immigration custody or, in the alternative, require a bond hearing under 8 U.S.C. § 1226(a) at which: (1) the government bears the burden of proving by clear and convincing evidence that Mr. Rosales poses a flight risk or danger to the community; and (2) Respondents are precluded from denying bond on the basis that Mr. Rosales is subject to mandatory detention under § 1225(b)(2).

JURISDICTION AND VENUE

6. This action arises under the Due Process Clause of the Fifth Amendment and the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 et seq.

7. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and 28 U.S.C. §§ 2201-02 (declaratory relief).

8. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

9. Venue lies in the judicial district in which Mr. Rosales is detained when he files his petition. 28 U.S.C. § 1391(e); *Rumsfeld v. Padilla*, 542 U.S. 426, 434, 447 (2004). Respondents are currently detaining Mr. Rosales at the Limestone County Detention Center, which sits in the

Western District of Texas.

REQUIREMENTS OF 28 U.S.C. § 2243

10. Under 28 U.S.C. § 2243, a court "entertaining an application for a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant . . . is not entitled thereto." 28 U.S.C. § 2243. If the Court issues an order to show cause, Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

11. Habeas corpus is "perhaps the most important writ known to the constitutional law … affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

12. Mr. Rosales, who has resided in the United States since 2002, has been unlawfully detained without the opportunity to challenge his continued detention since September 17, 2025. DHS's application of the mandatory detention provision at 8 U.S.C. § 1225(b)(2) to any individual who has entered the United States without inspection, including Mr. Rosales, has been almost universally rejected by district courts across the country, including this Court. Allowing Respondents to continue detaining Mr. Rosales without the opportunity to seek release on bond based on a strained reading of the INA that courts have overwhelmingly rejected only compounds the due process concerns in this case.

13. Mr. Rosales requests that the Court issue an Order to Show Cause, and direct Respondents to

file a response within three days, given the significant and unlawful restraint on his liberty.

PARTIES

14. Petitioner Nelson Rosales Foronda is a native and citizen of Bolivia who has been in immigration detention since September 17, 2025. ICE is currently detaining him at Limestone County Detention Center in Groesbeck, Texas.

15. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the INA, and oversees ICE, the agency responsible for Mr. Rosales's detention. Secretary Noem has ultimate custodial authority over Mr. Rosales and is sued in her official capacity.

16. Respondent Pamela Jo Bondi is the United States Attorney General. She has supervisory authority over EOIR, which oversees the immigration courts and the Board of Immigration Appeals ("BIA"). She is sued in her official capacity.

17. Respondent Bret Bradford is the Field Office Director for ICE's Houston Field Office. He oversees the operation of detention facilities within the Houston Field Office's area of responsibility, including the Limestone County Detention Center. Mr. Bradford is sued in his official capacity.

18. Respondent Warden, Limestone County Detention Center is the immediate custodian of Mr. Rosales. The warden is sued in his/her official capacity.

EXHAUSTION

19. The failure to exhaust administrative remedies does not bar Mr. Rosales's claims unless "Congress specifically mandates" exhaustion. *McCarthy v. Madigan*, 503. U.S. 140, 144 (1992). "But where Congress has not clearly required exhaustion, sound judicial discretion governs." *Id.*

20. The Court should not require exhaustion here where further administrative review of ICE's initial custody determination would be futile. *See Carr v. Saul*, 593 U.S. 83, 93 (2021) ("[T]his Court has consistently recognized a futility exception to exhaustion requirements.").

21. Critically, the BIA recently issued a precedential decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), adopting the new interpretation of 8 U.S.C. § 1225(b)(2) that DHS announced in its recent July 8, 2025 policy memorandum. *Matter of Yajure Hurtado* holds that noncitizens who entered the United States without inspection at any point are subject to mandatory detention under 8 U.S.C. § 1225(b)(2). Although, as discussed below, this decision is legally erroneous, all immigration judges—including those at the BIA—are obligated to apply the BIA's published precedent and deny any administrative appeal filed by Mr. Rosales. 8 C.F.R. § 103.10(b). And indeed, immigration courts have continued to apply this precedent notwithstanding recent orders from the U.S. District Court for the Central District of California certifying a nationwide class and granting summary judgment in an action for declaratory judgment challenging DHS's and EOIR's erroneous interpretation of the INA. *See Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3289861, at *11 (C.D. Cal. Nov. 20, 2025) (order granting partial summary judgment to named Plaintiffs-Petitioners); *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025) (order certifying Plaintiffs-Petitioners' proposed nationwide Bond Eligible Class, incorporating and extending declaratory judgment from Order Granting Petitioners' Motion for Partial Summary Judgment)

22. For this reason, Mr. Rosales need not go through the futile exercise of seeking a bond hearing before an immigration judge. *See Dale v. Holder*, 610 F.3d 294, 301 (5th Cir. 2010) ("Federal jurisdiction is not conditioned upon the petitioner affording the BIA a second bite at the apple

to rid its opinion of any legal error; administrative exhaustion requires only that federal courts refrain from "'address[ing] an immigration issue until the appropriate administrative authority has had the opportunity to apply its specialized knowledge and experience to the matter.'") (quoting *Toledo-Hernandez v. Mukasey,* 521 F.3d 332, 334 (5th Cir. 2008)).

23. Finally, because Mr. Rosales "raise[s] substantial constitutional question[s]," administrative exhaustion is excused. *See Postels v. Peters*, No. 99-cv-2369, 2000 U.S. Dist. LEXIS 3356, at *17 (E.D. La. Mar. 15, 2000) (citing *Von Hoffburg v. Alexander*, 615 F.2d 633, 638 (5th Cir. 1980).

STATEMENT OF FACTS

24. Mr. Rosales entered the United States without inspection in or around April 2002. He has resided continuously in this country ever since.

25. Prior to his detention, Mr. Rosales lived in Silver Spring, Maryland with his wife, a lawful permanent resident to whom he has been married for twenty-seven years.

26. Mr. Rosales and his wife operate a successful tile installation business in Silver Spring, Maryland. They have four children, two of whom are U.S. citizens and one of whom was granted Deferred Action for Childhood Arrivals (DACA).

27. Mr. Rosales has not been convicted of any crimes that would subject him to mandatory detention under 8 U.S.C. § 1226(c).

28. On or about September 17, 2025, ICE arrested Mr. Rosales and served him with a Notice to Appear placing him in removal proceedings under § 240 of the INA (codified at 8 U.S.C. § 1229a). *See* Ex. A, Notice to Appear.

29. ICE transferred Mr. Rosales from Farmville Detention Center in Virginia to Limestone County Detention Center in Groesbeck, Texas, where he remains detained without the opportunity to seek release on bond that he is entitled to under the Due Process Clause and § 1226(a). *See* Ex. B, ICE

Detainee Locator Results.

30. On information and belief, Respondents are only invoking their detention authority to detain Mr. Rosales under § 1225(b)(2) and are not asserting their authority to detain Mr. Rosales under § 1226.

LEGAL BACKGROUND

31. In 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Pub. L. 104-208, which set forth separate procedures for the removal and detention of arriving or recently arrived noncitizens and noncitizens who have entered and established a presence in the United States, even those who did so in violation of the immigration laws. *Compare* 8 U.S.C. § 1225, *with* 8 U.S.C. §§ 1226, 1229a. For individuals with an established presence in the United States, the INA mandates that "an immigration judge shall conduct proceedings for deciding the inadmissibility or deportability of a [noncitizen]." 8 U.S.C. § 1229a(a)(1). Removal proceedings under 8 U.S.C. § 1229a(a)(1) "shall be the sole and exclusive procedure from the United States" unless otherwise specified in the INA. 8 U.S.C. § 1229a(a)(3).

32. During the pendency of standard removal proceedings under 8 U.S.C. § 1229a, § 1226 provides for the detention of noncitizens already in the United States, even those who entered illegally or without inspection. For noncitizens subject to detention under § 1226, § 1226(a) sets forth the default rule, giving the government the discretion to arrest and detain noncitizens "pending a decision on whether the alien is to be removed from the United States," while § 1226(c) mandates the detention of certain classes of criminal noncitizens. 8 U.S.C. § 1226(a), (c). After an initial arrest, a noncitizen subject to detention under § 1226(a) may continue to be detained, released on conditional parole, or released on a bond of at least

$1,500. *Id.*

33. When a noncitizen is detained under § 1226(a), DHS makes an initial custody determination. 8 C.F.R. §§ 1003.19(a), 1236.1(d). The noncitizen may have DHS's initial custody determination reviewed by an immigration judge, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), and ultimately by the BIA, *see* 8 C.F.R. § 1236.1(d)(3).

34. In contrast to the discretionary detention scheme established for noncitizens already in the United States, IIRIRA created a separate, expedited removal process for certain "applicants for admission" deemed to be "arriving aliens." 8 U.S.C. § 1225(b). The INA defines an applicant for admission as a noncitizen "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 and including a[noncitizen] who is brought to the United States after having been interdicted in international or United States waters)." 8 U.S.C. § 1225(a)(1). The INA further clarifies that the term "application for admission" has "reference to the application for admission *into* the United States," making clear that the term applies to those applying to enter into the United States. 8 U.S.C. § 1101(a)(4) (emphasis added).

35. Notably, individuals subject to expedited removal are not eligible for bond pending completion of their removal hearings. *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018); *see id.* at 303 (distinguishing individuals subject to § 1225(b) from those "already present in the United States").

36. Expedited removal proceedings do not apply to all "applicants for admission." Instead, they may be applied only to: (1) individuals who are arriving in the United States at a port of entry without valid documents; and (2) those without valid documents who have been in the United States for less than two years and have not been admitted or paroled. 8 U.S.C. §

1225(b)(1)(A)(iii)(II); *see Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 109 (2020). Further, this second subset of individuals—noncitizens who have been in the United States for less than two years and have not been admitted or paroled—only become subject to expedited removal if so designated by DHS. *See* 8 U.S.C. § 1225(b)(1)(A)(iii)(I) (granting discretionary authority to apply expedited removal to any or all noncitizens described in 8 U.S.C. § 1225(b)(1)(A)(iii)(II)); *see also* Notice, Designating Aliens for Expedited Removal, 90 Fed. Reg. 8139, 8139 (Jan. 24, 2025) (designating the entire subset of noncitizens described in 8 U.S.C. § 1225(b)(1)(A)(iii)(II) subject to expedited removal: i.e., noncitizens "determined to be inadmissible under [8 U.S.C. §§ 1182(a)(6)(C) or (a)(7)] who have not been admitted or paroled into the United States and who have not affirmatively shown . . . that they have been physically present in the United States continuously for the two-year period immediately preceding the date of the determination of inadmissibility").

37. Noncitizens placed in expedited removal proceedings are referred to standard removal proceedings under § 1229a if they establish that they have a credible fear of persecution if removed. *See* 8 U.S.C. § 1225(b). Otherwise, the noncitizen is ordered removed "without further hearing or review." 8 U.S.C. § 1225(b)(1)(B)(iii). Further, any noncitizen "subject to the procedures under [8 U.S.C. § 1225(b)] shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed." 8 U.S.C. § 1225(b)(1)(B)(iv).

38. Section 1225(b)(2) mandates the detention of certain "applicants for admission" not covered by § 1225(b)(1). Yet in keeping with the statute's focus on arriving aliens, the statute does not mandate detention for all applicants for admission but only those "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2). *See, e.g.*, *Tinoco Pineda v. Noem*, No. 25-CA-01518,

2025 WL 3471418, at *5 (W.D. Tex. Dec. 3, 2025); *Espinoza Andres v. Noem*, No. 25-cv-5128, 2025 WL 3458893, at *3 (S.D. Tex. Dec. 2, 2025)("If, as Respondents argue, § 1225(b)(2)(A) were intended to apply to all 'applicants for admission,' there would be no need to include the phrase 'seeking admission' in the statute.").

39. And as the INA defines the terms "admission" and "admitted" to mean "the lawful *entry* of the alien into the United States after inspection and authorization by an immigration officer," 8 U.S.C. § 1101(a)(13)(A) (emphasis added), the phrase "seeking admission" does not cover those who have already entered the United States and may later seek post-entry relief or status. *See Aguilar v. Bondi*, No. 5:25-cv-01453, 2025 WL 3471417, at *5 (W.D. Tex. Nov. 26, 2025) (citing *Martinez v. Mukasey*, 519 F.3d 532, 544 (5th Cir. 2008)).

40. Further, IIRIRA's statutory headings reinforce the distinction between noncitizens who entered without inspection and are subject to discretionary detention under § 1226(a) and arriving aliens inspected upon initial entry to the United States who are subject to mandatory detention under § 1225(b). *Compare* IIRIRA, Pub. L. No. 104-208, § 302, 110 Stat. 3009 (entitled "*Inspection* of Aliens; Expedited Removal of Inadmissible *Arriving Aliens*; Referral for Hearing) (codified at 8 U.S.C. § 1225) (emphasis added), *with* IIRIRA, § 303 (codified at 8 U.S.C. § 1226) (entitled "Apprehension and Detention of Aliens").

41. For thirty years after IIRIRA's enactment, courts and the U.S. Government agreed that noncitizens who entered the United States without inspection and were encountered in the United States years after their initial entry were entitled to removal proceedings under § 1229a and subject to detention under § 1226. *See, e.g., Jennings*, 583 U.S. at 303; IIRIRA Implementing Regulation, 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.").

42. Despite amending the INA numerous times since passing IIRIRA, *see, e.g.*, REAL ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 302, Congress has never seen fit to clarify or alter this universally accepted interpretation of the statute.

43. Yet on July 8, 2025, the Government abruptly rejected the reading of 8 U.S.C. § 1226(a) it adopted when IIRIRA was first enacted and embraced for the next thirty years. In a complete reversal, "DHS, in coordination with the Department of Justice (DOJ) . . . revisited its legal position on detention and release authorities," and issued guidance instructing all ICE employees that 8 U.S.C. § 1225 rather than § 1226 "is the applicable immigration detention authority for all applicants for admission." Ex. C, ICE Memo: Interim Guidance Regarding Detention Authority for Applicants for Admission.

44. On September 5, 2025, the Board adopted DHS's novel statutory reading of 8 U.S.C. § 1225(b)(2)(A) in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216. The Board found no distinction between the statutory terms "applicant for admission" and "seeking admission," and concluded that § 1225(b)(2) must be read to include all noncitizens who have not been inspected and admitted at any point.[1] *Id.* at 221-22. Further, the Board asserted that legislative history supported its construction, although it did not cite any legislative history addressing the detention statutes. *Id.* at 223-25.

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[1] Nearly thirty years of agency interpretation of the law would have provided Mr. Rosales with an opportunity to seek review of DHS's custody determination in a hearing before an immigration judge under 8 U.S.C. § 1226(a). In fact, just weeks prior to *Matter of Hurtado*, the Attorney General designated for publication a decision recognizing that a noncitizen arrested in the interior of the United States and placed into removal proceedings under 8 U.S.C. § 1229a is detained under 8 U.S.C. § 1226(a) and eligible for release on bond. *See Matter of Akhmedov*, 29 I. & N. Dec. 166 (BIA 2025).

45. Yet as courts have almost universally concluded, DHS and EOIR's interpretation runs counter to the statute's plain language, basic canons of statutory interpretation, and Supreme Court precedent. *See, e.g.*, *Tinoco Pineda*, 2025 WL 3471418; *Espinoza Andres*, 2025 WL 3458893; *Granados v. Noem*, No. 25-CA-01464, 2025 WL 3296314 (W.D. Tex. Nov. 26, 2025); *Galdamez Martinez v. Noem*, No. 25-CV-01373, 2025 WL 3471575 (W.D. Tex. Nov. 26, 2025); *Aguilar v. Bondi*, No. g:25-cv-1453, 2025 WL 3471417, at *5 (W.D. Tex. Nov. 26, 2025).

46. First, as numerous courts have observed, DHS's application of § 1225(b)(2) to all applicants for admission reads the phrase "seeking admission" out of the statute. *See Aguilar*, 2025 WL 3471417, at *5 ("Respondents' interpretation would render the phrase 'seeking admission' in § 1225(b)(2)(A) mere surplusage.") (internal quotations omitted).

47. Second, Respondents' interpretation of § 1225(b)(2) renders recent amendments to the INA in the Laken Riley Act entirely redundant. *See Cardona-Lozano v. Noem*, No. 1:25-CV-1784-RP, 2025 WL 3218244, at *5 (W.D. Tex. Nov. 14, 2025). Specifically, the Laken Riley Act amended § 1226(c)(1) to require mandatory detention for individuals who are present in the United States without being admitted or paroled *and* who have committed certain criminal offenses. *See* Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025) (codified at 8 U.S.C. § 1226(c)(1)(E)). Yet if all noncitizens who are inadmissible were subject to mandatory detention under § 1225(b)(2), as Respondents contend, there would be no need for Congress to identify subcategories of inadmissible noncitizens who are subject to mandatory detention under § 1226(c), rendering the provision completely redundant. *Cardona-Lozano*, 2025 WL 3218244, at *5.

48. Third, Respondents' interpretation is contrary to the Supreme Court's holding in *Jennings*

where the Supreme Court squarely addressed the bounds of Respondents' detention authority under § 1225 and § 1226. The Court observed that "[w]hile the language of §§ 1225(b)(1) and (b)(2) is quite clear, §1226(c) is even clearer," confirming that "§ 1226 applies to aliens *already present in the United States*." *Jennings*, 583 U.S. at 303 (emphasis added).

49. Likewise, the Court acknowledged that "once inside the United States, aliens do not have an absolute right to remain here . . . , includ[ing] aliens who were inadmissible at the time of entry or who have been convicted of certain criminal offenses since admission," but explained that "[s]ection 1226 generally governs the process of arresting and detaining *that group of aliens* pending their removal." *Jennings*, 583 U.S. at 288 (emphasis added). Mr. Rosales falls within "that group of aliens," and his detention is governed by § 1226.

50. In short, DHS' policy and the BIA's new precedent violates the INA and deprives Mr. Rosales of due process by subjecting him, a man who has resided in the United States since 2002, to the same mandatory detention regime reserved for applicants at the border seeking initial entry into the United States.

CLAIMS FOR RELIEF

COUNT ONE

Violation of Immigration and Nationality Act

51. Mr. Rosales realleges and incorporates by reference the paragraphs above.

52. Mr. Rosales is not subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A).

53. Mandatory detention under § 1225(b)(2) is reserved for noncitizens "seeking admission" into the United States.

54. Mr. Rosales cannot reasonably be described as "seeking admission" into a country he has lived in, worked in, paid taxes to, and raised a family in for almost a quarter of a century.

55. Thus, this Court must find that subjecting Mr. Rosales to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) violates the INA.

56. As Respondents have not asserted any other statutory basis for his detention, this Court should order Mr. Rosales's outright release from custody. *See Galdamez Martinez*, 2025 WL 3471575, at *6.

COUNT TWO

Violation of Substantive Due Process

57. Mr. Rosales realleges and incorporates by reference the paragraphs above.

58. As a person living within the United States for over twenty-three years, Mr. Rosales is entitled to due process of law. U.S. Const. amend. V; *see generally Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

59. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." *Zadvydas*, 533 U.S. at 690.

60. The "Fifth and Fourteenth Amendments' guarantee of 'due process of law' [] include[s] a substantive component, which 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." *Reno v. Flores*, 507 U.S. 292, 301-02 (1993) (emphasis in original). Substantive due process "prevents the government from engaging in conduct that . . . interferes with rights implicit in the concept of ordered liberty." *United States v. Salerno*, 481 U.S. 739, 746 (1987).

61. The substantive due process right to be free from arbitrary detention extends to noncitizens

detained during removal proceedings, and indeed even those who have already been ordered removed from the United States on account of past criminal violations. *Zadvydas*, 533 U.S. at 690 (permitting detention in non-punitive circumstances only where "special justification . . . outweighs the individual's constitutionally protected interest in avoiding physical restraint.").

62. Indeed, the liberty interest in freedom from detention "is the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 FU.S. 507, 529 (2004).

63. Mr. Rosales has a fundamental interest in liberty and being free from arbitrary detention. His detention without a bond hearing before a neutral arbiter to determine whether that continued detention is necessary to ameliorate any flight risk or protect the community violates his substantive due process rights.

64. Given the strength of Mr. Rosales's liberty interest, due process requires the government to not only provide him with a bond hearing, but justify his continued detention by clear and convincing evidence that he poses a flight risk or a danger to the community. *See Espinoza Andres*, 2025 WL 3458893, at *5; *Vasquez Chinchilla v. Anda-Ybarra*, No. EP-25-CV-00548-DB, 2025 WL 3268459, at *5 (W.D. Tex. Nov. 24, 2025); *Zafra v. Noem*, No. EP-25-CV-00541-DB, 2025 WL 3239526, at *5 (W.D. Tex. Nov. 20, 2025) (listing cases).

COUNT THREE

Violation of Procedural Due Process

65. Mr. Rosales realleges and incorporates by reference the paragraphs above.

66. "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). While the Supreme Court has been clear that for noncitizens "on the threshold of initial entry . . . [w]hatever the procedure authorized by Congress is, it is due process." *Shaughnessy v. United*

States ex rel. Mezei, 345 U.S. 206, 212 (1953), this maxim does not apply to Mr. Rosales.

67. After living in the United States continuously since 2002, Mr. Rosales is not on the threshold of initial entry. Indeed, it is well established that noncitizens who "once passed through our gates, even illegally" are entitled to greater constitutional protections. *Id.*; *see also Zadvydas*, 553 U.S. at 693 ("It is well established that certain constitutional protections available to persons inside the United States are unavailable to [noncitizens] outside of our geographic borders."). Thus, even if the Court were to agree that Mr. Rosales is properly detained under § 1225(b)(2)— which he is not—his mandatory detention does not comply with due process.

68. As an individual who has "passed through our gates," Mr. Rosales is entitled to greater constitutional protections than those at the threshold of initial entry for whom due process is defined by the procedures set by Congress. *Mezei*, 345 U.S. at 212.

69. A procedural due process challenge is governed by a three-factor balancing test weighing: (1) "the private interest that will be affected by the official action;" (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, or additional or substitute procedural safeguards"; and (3) "the Government's interest" *United States v. White*, 927 F.3d 257, 264 (4th Cir. 2019) (citing *Mathews*, 424 U.S. at 335).

70. Each of these factors weigh in Mr. Rosales's favor and support a finding that he may not be detained without an opportunity to seek release on bond before an immigration judge.

71. Mr. Rosales has a strong private interest in remaining free from detention. Indeed, the Supreme Court has affirmed that even for noncitizens, "[f]reedom 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. And the Supreme Court, recognizing the strong private interest in remaining free from detention, has held "that

detention violates that Clause unless the detention is ordered in a criminal proceeding with adequate procedural protections, or, in certain special and narrow non-punitive circumstances where a special justification, such as harm-threatening mental illness, outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Id.* (cleaned up).

72. While the Government has an interest in ensuring Mr. Rosales's appearance at his removal proceedings and protecting the community, *see id.*, the bond procedures established under § 1226(a) adequately serve both interests by allowing an immigration judge to make an individualized assessment of a noncitizen's flight risk and the danger he may pose to the community. And the Government cannot plausibly justify denying a bond hearing based on "administrative burdens" when it has, for the past three decades, consistently provided bond hearings to noncitizens like Mr. Rosales who have established a presence in the United States after previously entering without inspection.

73. Finally, this case demonstrates the high risk of erroneous deprivation that would result if DHS were allowed to detain noncitizens like Mr. Rosales without any opportunity to challenge their detention before a neutral arbiter. Without a bond hearing, there is a high probability that Mr. Rosales will be detained even though his continued detention serves no non-punitive purpose as it is unnecessary to protect the community or to ensure his appearance at removal proceedings.

74. Denying Mr. Rosales any opportunity to demonstrate that his continued detention is unnecessary to protect the community or ensure his appearance at proceedings violates his procedural due process rights.

75. Given the strength of Mr. Rosales's liberty interest, due process requires the government to justify his continued detention by clear and convincing evidence that he poses a flight risk or

a danger to the community at any Court-ordered bond hearing.

PRAYER FOR RELIEF

Based on the foregoing, Mr. Rosales requests that this Court:

(1) Assume jurisdiction over this matter;

(2) Issue an order requiring Respondents to show cause why this Petition should not be granted within three days;

(3) Declare that 8 U.S.C. § 1225(b)(2) does not apply to Mr. Rosales;

(4) As Mr. Rosales may not be detained under § 1225(b)(2) and Respondents have not asserted any other statutory basis for his detention, order that Mr. Rosales be released from immigration custody.

(5) Alternatively, order that Mr. Rosales be afforded a bond hearing at which the government:

(a) bears the burden of proving, by clear and convincing evidence, that Mr. Rosales poses a danger to the community or risk of flight to justify continued detention; and

(b) may not invoke 8 U.S.C. § 1225(b)(2)(A) to deny release on bond.

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

Dated: December 11, 2025

Respectfully submitted,

/s/ Jessica Dawgert
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Counsel for Petitioner

CERTIFICATE OF REPRESENTATION

I am submitting the verification on behalf of Mr. Rosales. I am Mr. Rosales's attorney and I or others in my office have discussed the facts presented in this Petition with Mr. Rosales or his family. Based on those discussions, I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: December 11, 2025

Respectfully submitted,

/s/ Jessica Dawgert
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