UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

HECTOR MIGUEL AGUILAR ROSADO,

Plaintiff-Petitioner,

v.

MARY DE ANDA YBARRA in her official capacity as Field Office Director of El Paso Field Office of U.S. Immigration & Customs Enforcement;

WARDEN in his or her official capacity as Warden of Camp East Montana Detention Facility, U.S. Immigration & Customs Enforcement;

TODD LYONS, in his official capacity as Acting Director, U.S. Immigration and Customs Enforcement;

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

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

Defendants-Respondents.

Civil No. _____

PETITION FOR WRIT OF HABEAS CORPUS AND
COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

COMES NOW Plaintiff-Petitioner HECTOR MIGUEL[1] AGUILAR ROSADO and hereby respectfully petitions this Court for a writ of habeas corpus to remedy his wrongful and unlawful

[1] Government documents have incorrectly listed Plaintiff-Petitioner's middle name as Manuel. His correct middle name is Miguel.

detention absent any bond or other individualized hearing and files the instant Complaint for Declaratory and Injunctive Relief against Defendants-Respondents MARY DE ANDA YBARRA, in her official capacity as Field Office Director of El Paso Field Office of U.S. Immigration & Customs Enforcement ("ICE"); TODD LYONS, in his official capacity as Acting Director of ICE; KRISTI NOEM, in her official capacity as Secretary, U.S. Department of Homeland Security; and PAMELA BONDI, in her official capacity as Attorney General of the United States, challenging his unlawful and unconstitutional immigration detention by ICE as violative of the Administrative Procedure Act ("APA"), 5 U.S.C. § 706(2)(A)-(E); contrary to 8 U.S.C. § 1226 and 8 C.F.R. §§ 1003.19(i)(2), 1236(d)(1); and in contravention of his Fifth Amendment right to procedural and substantive due process. In support of the relief requested herein, Plaintiff-Petitioner respectfully states as follows:

INTRODUCTION

Contrary to long-standing precedent, existing statutory and regulatory authority, and established agency policies and practices, the Executive—acting contrary to law, arbitrarily and capriciously, and in disregard and violation of both procedural and substantive due process guaranteed under the Fifth Amendment to the United States Constitution—has now determined to reclassify all undocumented aliens in the United States as "applicant[s] for admission" at the border subject to mandatory immigration detention without bond pending the entirety of their removal proceedings.

Specifically, on September 5, 2025, the Board of Immigration Appeals ("BIA") issued *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), a precedent decision declaring that any noncitizen who is present in the United States without having been inspected and admitted is now subject to detention under 8 U.S.C. § 1225(b)(2), which applies only to "arriving aliens," and

not subject to 8 U.S.C. § 1226(a), which applies to "aliens already in the country." *See Jennings v. Rodriguez,* 583 U.S. 281, 281 (2018). This decision is based on a new strained reading of Section 1225, previously adopted by DHS on July 8, 2025, as articulated in *Matter of Q. Li*, 29 I. & N. Dec. 66 (BIA 2025).

Together, *Q. Li* and *Hurtado* purport to strip Immigration Judges of jurisdiction over custody redeterminations for noncitizens who entered without inspection and have not subsequently obtained lawful status. These decisions create a sweeping new rule that deprives most noncitizens who entered the United States without inspection any right to seek bond from an Immigration Judge regardless of how long they have been residing in the country or where they were arrested.

This detention is also averred to endure the entirety of the noncitizen's removal process. According to latest TRAC Immigration and Executive Office for Immigration Review ("EOIR") reports, the average length of time from a Notice to Appear ("NTA") to a final order of removal is from two (2) to three (3) years nationwide (with some busier jurisdictions taking longer). As a result, this newly discovered detention authority invented by ICE is akin to a confinement sentence in a term of years to any noncitizen picked up off the street by ICE today, tomorrow, and unless nationwide compulsory injunctive relief is issued or until current immigration enforcement efforts are altered. This radical shift in policy constitutes a thinly veiled attempt to utilize detention as an instrument of suffering and to psychologically and financially coerce immigrants to abandon the legal process as both the foreseeable result and unstated goal undergirding the change.

This reclassification and reasoning have already been rejected by this Court and District Courts nationwide. *See, e.g., Vieira v. Anda-Ybarra,* EP-25-CV-00432-DB (W.D. Tex. Oct 16, 2025); *Hernandez-Fernandez v. Lyons*, 5:25-CV-00773-JKP (W.D. Tex. Oct 21, 2025); *Antonio*

Aguirre Villa v. Normand, No. 5:25-cv-89, 2025 U.S. Dist. LEXIS 217348 (S.D. Ga. Nov. 4, 2025); *Juan Ortega Jimenez v. Warden FCI Atlanta (DHS)*, No. 1:25-cv-5650 (N.D. Ga. Nov. 6, 2025); *Hernandez v. Glades Warden (DHS)*, No. 2:25-cv-830-KCD-NPM, 2025 U.S. Dist. LEXIS 212865 (M.D. Fla. Oct. 29, 2025); *Puga v. DHS*, No. 25-24535, 2025 U.S. Dist. LEXIS 203222 (S.D. Fla. Oct. 15, 2025); *Contreras-Cervantes v. DHS*, No. 2:25-cv-13073, 2025 U.S. Dist. LEXIS 205416, at *22 n.4 (E.D. Mich. Oct. 17, 2025) (collecting cases); *Sixto Hernandez v. DHS*, No. 1:25-cv-1565, 2025 U.S. Dist. LEXIS 204978 (E.D. Va. Oct. 16, 2025); *E.C. v. DHS*, No. 2:25-cv-1789 (D. Nev. Oct. 14, 2025); S.D.B.B. v. DHS, No. 1:25-cv-882, 2025 U.S. Dist. LEXIS 194795 (M.D.N.C. Oct. 7, 2025); *Orellana v. DHS*, No. 25-1788, 2025 U.S. Dist. LEXIS 164986 (D. Md. Oct. 7, 2025); *Quispe v. Crawford*, No. 1:25-cv-1471, 2025 U.S. Dist. LEXIS 194070 (E.D. Va. Sept. 29, 2025).

Indeed, on November 20, 2025, the district court granted partial summary judgment on behalf of individual plaintiffs and on November 25, 2025, certified a nationwide class and extended declaratory judgment to the certified class. *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). The declaratory judgment held that the Bond Denial Class members are detained under 8 U.S.C. § 1226(a), and thus may not be denied consideration for release on bond under § 1225(b)(2)(A). *Maldonado Bautista*, 2025 WL 3289861, at *11.

* * *

Plaintiff-Petitioner brings this petition for a writ of habeas corpus to seek enforcement of his rights as members of the Bond Denial Class certified in *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (C.D. Cal.) Plaintiff-Petitioner therefore requests the Court either mandate his release from immigration custody or declare and enforce his right to a bond redetermination or other individualized hearing forthwith.

Due to the ongoing deprivation of his liberty and urgent irreparable harms flowing to his U.S. citizen fiancée, Plaintiff-Petitioner respectfully requests entry of an Order to Show Cause within three (3) days under 28 U.S.C. § 2243, and specifically reserves the right to file an Emergency Motion for Temporary Restraining Order in accordance with Fed. R. Civ. P. 65(b).

PARTIES

1. Plaintiff-Petitioner Hector Miguel Aguilar Rosado ("Plaintiff-Petitioner") is an individual who resides in Live Oak, a city located in Suwannee County, Florida.

2. Plaintiff-Petitioner is currently in the physical custody of U.S. Immigration and Customs Enforcement ("ICE"), a component of the U.S. Department of Homeland Security ("DHS").

3. Plaintiff-Petitioner is currently detained at Camp East Montana Detention Facility, located in the City of El Paso, which is located in El Paso County, Texas.

4. Defendant-Respondent Warden in his or her official capacity as Warden of Camp East Montana Detention Facility, U.S. Immigration & Customs Enforcement.

5. Defendant-Respondent Mary De Anda Ybarra is sued in her official capacity as Field Office Director, El Paso Field Office, ICE, with oversight over Camp East Montana Detention Facility. As Field Office Director, she is Plaintiff-Petitioner's legal custodian.

6. Defendant-Respondent Todd Lyons is sued in his official capacity as the Acting Director

of Immigration and Customs Enforcement, which is a component of DHS. As Acting Director of ICE, he is Plaintiff-Petitioner's legal custodian.

7. Defendant-Respondent Kristi Noem is sued in her official capacity as Secretary of DHS and generally responsible for the administration and enforcement of applicable laws and statutes governing immigration. As Secretary of DHS, she is Plaintiff-Petitioner's legal custodian.

8. Defendant-Respondent Pamela Bondi is sued in her official capacity as the Attorney General of the United States. She has responsibility for the administration and enforcement of the immigration laws pursuant to 8 U.S.C. § 1103, and thus legal custodian of Plaintiff-Petitioner.

JURISDICTION

9. This action arises under the United States Constitution and the Immigration and Nationality Act of 1952, 8 U.S.C. § 1101, *et seq.* ("INA").

10. This Court has jurisdiction over this petition for writ of habeas corpus under 28 U.S.C. § 2241 (habeas corpus); 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 1361 (mandamus); art. I, § 9, cl. 2 of the U.S. Constitution ("Suspension Clause"); U.S. Const. amend. V (the Due Process Clause of the U.S. Constitution); and has jurisdiction to issue a declaratory judgment pursuant to 28 U.S.C. §§ 2201-02.

11. This Court may grant habeas relief pursuant to 28 U.S.C. §§ 2201-02, 28 U.S.C. § 2241, and the All Writs Act, 28 U.S.C. § 1651.

12. This Court has jurisdiction over all non-habeas claims alleged in this action pursuant to 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 1346 (federal defendant); and 5 U.S.C. § 702 (right of review).

13. The Court is authorized to grant the requested relief under 5 U.S.C. § 706(2)(A)-(E); 28 U.S.C. §§ 2201-2202; and 28 U.S.C. § 1651, as well as pursuant to its inherent equitable powers.

VENUE

14. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2), and (e)(1)(B) because a substantial part of the events or omissions giving rise to the claim occurred in this District, no real property is involved, and Plaintiff-Petitioner is detained within this judicial district.

FACTS & BACKGROUND

15. Plaintiff-Petitioner Hector Manuel Aguilar Rosado ("Petitioner-Plaintiff") is a twenty-eight (28)-year-old native and citizen of Mexico. *See* Motion for Bond Hearing (filed herewith as Exhibit A) and Notice of Filing ("NOF") Documents in Support of Release on Bond (filed herewith as Exhibit B).

16. Plaintiff-Petitioner entered the United States without inspection on or about March 10, 2002, and has resided continuously in the United States for over twenty-three (23) years. Exhibit B. Plaintiff-Petitioner has established his home, work, and life in Live Oak, Florida, where he has resided since he was a young child and where he continued to reside until his recent detention. *Id.*

17. Plaintiff-Petitioner is engaged to Shannon Saunders, a U.S. citizen. *Id.* at Exhibit B. The couple has been together for over seven years, and during that time Plaintiff-Petitioner has helped to raise his fiancée's two (2) United States citizen children: G.B.S, born in February 2006, and D.B.S., born in March 2012. *Id.* Plaintiff-Petitioner has helped his fiancée to raise both of her sons as a devoted father-figure and provider, and letters from future in-laws, family, and friends confirm his good moral character and devotion to his loved ones. *Id.*

18. Since 2023, Plaintiff-Petitioner has co-managed a limited liability company in Florida alongside his fiancée. *Id.* at Exhibit B. His fiancée describes Plaintiff-Petitioner as being essential to the company's daily operations and as suffering financial harm in his absence. *Id.* Plaintiff-Petitioner is the primary breadwinner for his family, bringing in approximately $3000 monthly.

Id.

19. Letters of support from his U.S. citizen siblings, future in-laws, fiancée, and others further attest to Petitioner-Plaintiff's integrity and well-respected standing in his community. *Id.* at Exhibit C.

Efforts to Legalize Immigration Status

20. Plaintiff-Petitioner has no prior removals or immigration violations beyond his initial entry. See Form I-213, Record of Deportable/Inadmissible Alien (filed herewith as Exhibit C).

21. Plaintiff-Petitioner and his fiancée have been in a relationship for over seven years and were planning to marry. Exhibit B. Since his detention, Ms. Saunders has requested to the ICE detention center at least 3 times for permission to marry. Exhibit B. Once married to his U.S. citizen fiancée, Plaintiff-Petitioner can pursue lawful status through his marriage to a U.S. Citizen.

22. Plaintiff-Petitioner will then qualify for Cancellation of Removal ("Form EOIR 42B") relief as a nonpermanent resident under 8 U.S.C. § 1229b. Exhibit B. He has been continuously present in the United States for more than ten (10) years; is a person of good moral character; has no disqualifying convictions; and his removal would cause "exceptional and extremely unusual hardship" to his U.S. citizen wife and stepchildren. *Id.*

ICE Arrest & Ongoing, Unlawful Detention

23. On July 22, 2025, Plaintiff-Petitioner was arrested by ICE agents. Exhibit C. The arrest was not criminal in nature.

24. Plaintiff-Petitioner was thereafter transported to and remains detained at Camp East Montana Detention Facility. See NTA dated October 31, 2025 (filed herewith as Exhibit H).

25. Over 3 months later, ICE subsequently served Plaintiff-Petitioner with a Notice to Appear dated October 31, 2025 charging him as "an alien present in the United States who has not been

admitted or paroled" pursuant to INA § 212(a)(6)(A)(i), codified at 8 U.S.C. § 1182(a)(6)(A)(i) and as "an immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act..." pursuant to INA § 212(a)(7)(A)(i)(I), codified at 8 U.S.C. § 1182(a)(7)(A)(i)I). Exhibit "H".

26. His removal proceedings are pending before the El Paso, Texas SPC Immigration Court before Immigration Judge Dean Tuckman. See Notice of Hearing (filed herewith as Exhibit K).

27. On August 15, 2025, in accordance with 8 C.F.R. §§ 1003.14(a), 236.1(c), Plaintiff-Petitioner requested a bond hearing by and through his removal defense counsel. Plaintiff-Petitioner filed a Motion for Bond Hearing with the El Paso SPC Immigration Court, seeking a custody redetermination pursuant to 8 C.F.R. § 1236. Exhibit A.

28. On August 28, 2025, Immigration Judge Stephen Ruhle ordered that the Plaintiff-Petitioner's request was granted and further ordered that he be released from custody under bond of $2500.00. See Order of the Immigration Judge dated August 28, 2025 (filed herewith as Exhibit F).

29. On August 28, 2025, ICE served Plaintiff-Petitioner with a Notice of ICE Intent to Appeal Custody Redetermination, which automatically stayed the Immigration Judge's custody redetermination decision. See Notice of ICE Intent to Appeal Custody Redetermination, (filed herewith as Exhibit G).

30. On September 8, 2025, Immigration Judge Stephen Ruhle issued an Amended Order of the Immigration Judge revoking the prior bond of $2500 and denying the Plaintiff-Petitioner's request for a change in custody status citing *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). *See* Amended Decision of Immigration Judge (filed herewith as Exhibit H).

31. On November 26, 2025, after certification of the nationwide class in *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), Plaintiff-Petitioner again requested a bond hearing by and through his removal defense counsel. *See* Motion for Bond Hearing dated November 26, 2025 (filed herewith as Exhibit I).

32. Plaintiff-Petitioner is a member of the class as Mr. Aguilar Rosado is part of the nationwide class, as he does not have lawful status and (1) entered without inspection, (2) was not apprehended upon arrival, and (3) and is not subject to mandatory detention under INA 236(c). Exhibit I.

33. On December 4, 2025, Immigration Judge Stephen Ruhle denied the bond request as follows: "Prior bond hearing held, and no new material facts or circumstances are presented in the current motion that would change the prior decision denying bond due to lack of jurisdiction." *See* Order of the Immigration Judge dated December 4, 2025 (filed herewith as Exhibit J).

Ongoing & Irreparable Harms

34. Petitioner-Plaintiff's detention of over four months has caused severe hardship to himself and his family. Exhibit B.

35. Petitioner-Plaintiff's U.S. citizen fiancée, U.S. Citizen siblings, and others have provided letters describing the harm caused by Petitioner-Plaintiff's detention and separation from his U.S. citizen fiancée and extended family and community. *Id.*

LEGAL AUTHORITY

Categories of Immigration Detention

36. The INA generally provides for three (3) forms of civil detention for noncitizens in removal

proceedings.

37. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens arrested "on a warrant" pending the resolution of standard removal proceedings before an IJ. *See* 8 U.S.C. § 1229(a). Unless they have been arrested, charged with, or convicted of certain enumerated crimes, which would subject them to mandatory detention until their removal proceedings are concluded, *see* 8 U.S.C. § 1226(c), an individual detained under Section 1226(a) can be released by ICE on bond or conditional parole. *See* 8 U.S.C. § 1226(a)(1); 8 C.F.R. § 236.1(c)(8). If release is denied by ICE, the detainee can seek a custody redetermination before an Immigration Judge, i.e., bond hearing, at the outset of their detention. *See* 8 C.F.R. §§ 1003.19(a), 1236.1(d). At the hearing, the noncitizen may present evidence to show they are not a flight risk or danger to the community and should therefore be released on bond. *See generally Matter of Guerra*, 24 I. & N. Dec. 37, 50 (BIA 2006).

38. Second, the INA imposes mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and of 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" under Section 1225(b)(2). Individuals detained under Section 1225(b) receive no bond hearing, *see* 8 U.S.C. § 1225(b)(1)(B)(ii), (iii)(IV), (b)(2)(A), and can only be released under humanitarian parole at the arresting agency's discretion. *See Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018); 8 U.S.C. § 1192(d)(5).

39. Lastly, the INA provides for detention of noncitizens who have been issued a final order of removal and pending removal from the United States. *See* 8 U.S.C. § 1231(a)-(b). This authority is not applicable here.

40. This action concerns distinction between mandatory versus discretionary detention

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

41. The Supreme Court summarizes the interplay between Sections 1226 and 1225 as follows: "In sum, U.S. immigration law authorizes the Government to detain certain [noncitizens] seeking admission *into* the country under §§ 1225(b)(1) and (b)(2). It also authorizes the Government to detain certain [noncitizens] *already in the country* pending the outcome of removal proceedings under §§ 1226(a) and (c)." *Jennings*, 582 U.S. at 289 (emphasis added).

42. The policy challenged herein is based on a reading of Section 1225(b)(2) to require mandatory detention for any individual who entered the United States without inspection despite having not been apprehended upon arrival or shortly thereafter.

43. Prior to the enactment of the IIRIRA, noncitizens arrested in the interior and charged with entering the U.S. without inspection were entitled to a custody hearing before an Immigration Judge or other hearing officer, while those stopped at the border were only entitled to release on parole. *See* 8 U.S.C. § 1252(a) (1994) (authorizing detention of noncitizens "arriving at ports of the United States"). Congress clarified that the IIRIRA amendment of Section 1226(a) simply "restate[d]" the detention authority previously found at § 1252(a) "to arrest, detain, and release on bond a[] [noncitizen] who is not lawfully in the United States.". *See* H.R. Rep. No. 104-469, pt. 1, at 229 (1996); *see also* H.R. Rep. No. 104-828, at 210 (1996) (Conf. Rep.).

44. Congress separately maintained the existing mandatory detention scheme for noncitizens arriving in the United States without a clear right to admission and expanded the scope of that detention scheme to include certain recently arrived noncitizens. Compare 8 U.S.C. § 1225(b)

(1994 ed.), with 8 U.S.C § 1225(b)(1)-(2). These amendments were designed to address the perceived problem of noncitizens arriving in the United States. *See* H.R. Rep. No. 104-469, p. 1, at 157-58, 228-29.

45. In distinguishing between noncitizens arriving versus noncitizens residing in the United States, Congress reflected its understanding of longstanding due process precedent that recognizes the more substantial due process rights of noncitizens already residing in the U.S. with those of noncitizens recently arriving. *Id.* at pt. 1, at 163-66 (recognizing the "constitutional liberty interest[s]" of noncitizens present in the U.S., versus the assumed minimal due process rights of arriving noncitizens) (citing Knauff v. Shaughnessy, 338 U.S 537 (1950)).

46. Until DHS and DOJ adopted the policy described below, the longstanding practice of the agencies charged with interpreting and enforcing the INA applied Section 1226(a) to noncitizens like Plaintiff-Petitioner, who entered the United States without inspection and were apprehended while residing in the United States. Regulations drafted following the enactment of the IIRIRA explained this distinction. *See Inspection and Expedited Removal of Aliens*, 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 . . . The effect of this change is that inadmissible aliens, except for arriving aliens, have available to them bond redetermination hearings before an immigration judge, while arriving aliens do not. This procedure maintains the status quo . . .").

47. Accordingly in the decades since IIRIRA was enacted, DHS and the EOIR have applied Section 1226(a) to the detention of individuals apprehended within the continental United States who entered without inspection and provided them access to release on bond.

48. That practice was consistent with additional decades of pre-IIRIRA practice, in which

noncitizens who were not "arriving" were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting the new Section 1226(a) simply "restates" the detention authority previously found at Section 1252(a)).

49. Prior to the change in policy on July 8, 2025, at issue, noncitizens apprehended in the United States were largely granted individualized bond hearings under Section 1226(a), and ICE never argued that that Section 1226(a) did not apply to them.

50. The Laken Riley Act created additional exceptions to Section 1226 and authorized mandatory detention for certain categories of noncitizens under Section 1226(c). *See* Pub. L. No. 119-1, 139 Stat. 3 (2025); 8 U.S.C. § 1226(c).

51. Specifically, Section 1226(c)(1)(E) (enacted by the Laken Riley Act) requires mandatory detention for people who were charged as being (1) inadmissible under Section 1182(a)(6)(A)(i) (the inadmissibility ground for entry without inspection) or (a)(7) (the inadmissibility ground for lacking valid documentation to enter the United States) and who (2) have been arrested, charged with, or convicted of certain crimes not relevant here. *See* 8 U.S.C. § 1226(c)(1)(E). The Laken Riley amendments otherwise continued to authorize discretionary detention of noncitizens charged with being inadmissible who do not fall into those enumerated Section 1226—not Section 1225—applies to individuals such as Plaintiff-Petitioner herein who are apprehended well-within the interior of the United States and many years after their entry without inspection.

New ICE Unlawful Detention Policy

52. Section 1226, not Section 1225, applies to Plaintiff-Petitioner.

53. The statute must be read against the backdrop of "our constitutional principles." *Zadvydas*, 533 U.S. at 690-99.

54. Regardless of the BIA's recent decisions in *Matter of Q. Li*, 29 I. & N. Dec. 66 (BIA 2025) and *Matter of Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), the task of resolving this issue belongs to the independent judgment of the courts. *Loper Bright Enters. v. Raimando*, 603 U.S. 369, 385 (2024) ("When the meaning of a statute [is] at issue, the judicial role [is] to interpret the act of Congress, in order to ascertain the rights of the parties.") (internal quotation marks and citation omitted).

55. The first step of interpreting the relevant INA provisions is to determine the plain meaning of the statute. *Esquivel-Quintana v. Sessions*, 581 U.S. 385, 391 (2018) ("We begin, as always, with the text.")).

56. First, the title of Section 1225 indicates that it concerns "inspection by immigration officers," and "expedited removal of inadmissible arriving aliens." *See* 8 U.S.C. § 1225. Paragraph (b)(1) of that Section sets forth the procedure for inspection of "aliens arriving in the United States and certain other aliens who have not been admitted or paroled." *Id.*, § 1225(b)(1).

57. Paragraph (b)(1) goes on to encompass "an alien . . . who is arriving in the United States," and other "certain other aliens" designated by the Attorney General "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 2-year period immediately prior to the date of the determination under this subparagraph." *Id.*

58. ICE's "one-size-fits -all application of Section 1225(b)(2) to all aliens, with no distinctions, violates the fundamental canons of statutory construction and renders Section 1226 utterly superfluous. Laken Riley Act amendments to Section 1226(c), the legislative history of the IIRIRA, and longstanding practice supports the conclusion that Section 1225 does not apply to a noncitizen who has been residing in the United States for more than two (2) years.

59. Paragraph (b)(1) sets forth a process for expedited removal of the above-described classes of noncitizens. *Id.* Section 1225(b)(2), the provision at issue herein, concerns "Inspection of other aliens" not covered by Paragraph (b)(1). Paragraph (b)(2)(A) states:

> [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 of this title.

See 8 U.S.C. § 1225(b)(2)(A).

60. By its plain text, Section 1225(b)(2) thus applies where several conditions are met: (1) an "examining immigration officer" in the context of "inspection" (2) determines that an individual is an "applicant for admission" who is (3) "seeking admission." Section 1225(a)(1) defines "aliens treated as applicants for admission" for purposes of "inspection" under this Section as follows:

> 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 and including an alien who is brought to the United States after having been interdicted in international or United States waters) shall be deemed for purposes of this chapter an applicant for admission.

See 8 U.S.C. § 1225(a)(1).

61. To reiterate, Section 1225(b)(2)(A) narrows the above broader definition of "applicants for admission" and applies in the context of (1) "inspection" by an "examining immigration officer" only to (2) "applicants for admission" as defined above, who are (3) "seeking admission," and (4) whom Section (b)(1) does not address.

62. ICE avers that this definition of "applicant for admission" is the key provision and necessarily encompasses any noncitizen in the United States who has not been admitted, no matter how long they have resided in the United States. Stretching the phrase to continue potentially for years or decades pushes the statutory text beyond its breaking point.

63. ICE's sweeping and unlimited reading of "applicants for admission" ignores the fact that

that term is further limited in Section1225(b)(2) by the active construction of the phrase "seeking admission" which entails some kind of affirmative action taken to obtain authorized entry. *See e.g., Martinez v. Hyde*, 2025 U.S. Dist. LEXIS 141724 (D. Mass. July 24, 2025); *see also Lopez Benitez v. Francis*, 2025 U.S. Dist. LEXIS 153952 (S.D.N.Y. Aug. 13, 2025). It is inconsistent with the plain, ordinary meaning of the phrase "seeking admission" to apply this section to all noncitizens already present and residing in the United States, regardless of whether they are taking any affirmative acts that constitute "seeking admission."

64. The statutory text indicates that for purposes of mandatory detention under Section 1225(b)(2)(A), the phrases "applicants for admission" and "seeking admission," taken together, are limited in temporal scope, and cannot be read to apply indefinitely to all noncitizens residing in the United States for years or even decades.

65. By contrast, ICE's reading effectively ignores the phrase "seeking admission" and asserts only the phrase "applicants for admission" controls. But that interpretation, which relies on conflating the phrases "applicants for admission" and "seeking admission" as "synonymous" would render the phrase "seeking admission" redundant notwithstanding that one of the most basic interpretative canons instructs that a "statute should be construed so that effect is given to all its provisions." *Corley v. United States*, 556 U.S. 303, 314 (2009).

66. Section 1225's limited temporal focus is further evident in other provisions of Section 1225 which suggest Congress' focus was on ports of entry or recent arrivals, not longtime noncitizen residents intercepted far from any border. *See K Mart Corp. v. Cartier, Inc.*, 488 U.S. 281, 291 (1988) ("In ascertaining the plain meaning of the statue, the court must look to the particular statutory language at issue, as well as the language and design of the statute as a whole.")

67. Simply put, ICE's interpretation defies the plain language of the INA, its long-extant

implementing regulations, and canons of statutory construction. The INA's plain text demonstrates Section 1226(a)—not Section 1225(b)—applies to people like Plaintiff-Petitioner. Section 1226(a) is the default rule applying to all persons pending a decision on whether the noncitizen is to be removed. *Jennings*, 582 U.S. at 281.

68. Indeed, portions of the text of Section 1226 also explicitly apply to people charged as being inadmissible including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to inadmissible individuals makes clear that, by default, inadmissible individuals are not subject to subparagraph (E)(ii) are entitled to a bond hearing under subjection (a). When Congress creates specific exceptions to a statute's applicability, it self-proves that absent those exceptions, the statute generally applies. *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010).

69. It is beyond debate that the mandatory detention provision of Section 1225(b)(2) does not apply to Plaintiff-Petitioner and that his detention is governed by Section 1226 and he is thus eligible for bond redetermination under 8 C.F.R. §§ 1003.19(i)(2), 1236(d)(1).

* * *

70. Plaintiff-Petitioner has retained undersigned counsel to represent him in this lawsuit and is obligated to pay their reasonable attorneys' fees.

71. All conditions precedent to bringing this action have occurred or have been waived.

72. Plaintiff-Petitioner now brings this petition for issuance of a writ of habeas corpus under 28 U.S.C. § 2241, and action averring violation of the Administrative Procedure Act ("APA"), 5 U.S.C. § 706(2)(A)-(E) due to ICE's wrongful, arbitrary and capricious, and unlawful deprivation of his liberty in immigration detention absent any bond redetermination or other individualized hearing contrary to 8 U.S.C. § 1226 and 8 C.F.R. §§ 1003.19(i)(2), 1236(d)(1), as well as violation

of his Fifth Amendment rights to procedural and substantive due process, seeking declaratory and injunctive relief.

CLAIMS FOR RELIEF

COUNT I

WRIT OF HABEAS CORPUS

Deprivation of Liberty Contrary to Law

73. Plaintiff-Petitioner adopts, repeats, and realleges all foregoing allegations in Paragraphs 1-72 above as though fully stated and set forth herein.

74. The Constitution guarantees that the writ of habeas corpus is "available to every individual detained within the United States." *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004) (*citing* U.S. Const., Art I, § 9, cl. 2). "The essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and . . . the traditional function of the writ is to secure release from illegal custody." *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973).

75. A writ of habeas corpus may be granted to a petitioner who demonstrates that he is in custody in violation of the Constitution or federal law. *See* 28 U.S.C. § 2241(c)(3).

76. Historically, "the writ of habeas corpus has served as a means of reviewing the legality of Executive detention, and it is in that context that its protections have been strongest." *I.N.S. v. St. Cyr*, 533 U.S. 289, 301 (2001). Accordingly, a district court's habeas jurisdiction includes challenges to immigration-related detention. *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001); *see also Demore v. Kim*, 538 U.S. 510, 517 (2003).

77. As discussed, *supra*, at Paragraph Nos. 23-33 and 36-69, Petitioner-Plaintiff is being detained in direct violation of the governing statutory and regulatory scheme, as interpreted by the Supreme Court.

78. Defendants-Respondents have denied under erroneous and *ultra vires* authority Plaintiff-Petitioner any bond redetermination hearing or other individualized hearing with constitutionally adequate procedures.

79. Defendants-Respondents lack sufficient legal authority to detain Plaintiff-Petitioner absent any meaningful bond redetermination hearing or other individualized hearing with constitutionally adequate procedures in contravention of 8 U.S.C. § 1226 and 8 C.F.R. §§ 1003.19(i)(2).

COUNT II

VIOLATION OF THE INA

Request for Relief Pursuant to *Maldonado Bautista*

80. Plaintiff-Petitioner adopts, repeats, and realleges all foregoing allegations in Paragraphs 1-72 above as though fully stated and set forth herein.

81. As a member of the Bond Eligible Class, Petitioner is entitled to consideration for release on bond under 8 U.S.C. § 1226(a).

82. The order granting partial summary judgment in Maldonado Bautista holds that Respondents violate the INA in applying the mandatory detention statute at § 1225(b)(2) to class members.

83. The order granting class certification in Maldonado Bautista further orders that "[w]hen considering this determination with the MSJ Order, the Court extends the same declaratory relief granted to Petitioners to the Bond Eligible Class as a whole."

84. Respondents are parties to Maldonado Bautista and bound by the Court's declaratory judgment, which has the full "force and effect of a final judgment." 28 U.S.C. § 2201(a).

85. By denying Petitioner a bond hearing under § 1226(a) and asserting that he is subject to mandatory detention under § 1225(b)(2), Respondents violate Petitioner's statutory rights under

the INA and the Court's judgment in Maldonado Bautista.

COUNT III

VIOLATION OF ADMINISTRATIVE PROCEDURE ACT

Deprivation of Liberty Contrary to Law

86. Plaintiff-Petitioner adopts, repeats, and realleges all foregoing allegations in Paragraphs 1-72 above as though fully stated and set forth herein.

87. Under § 706(a) of the APA, final agency action can be set aside if it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law . . . in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; . . . [or] without observance of procedure required by law." *See* 5 U.S.C. § 706(2)(A), (C)-(D).

88. As discussed, *supra*, at Paragraph Nos. 23-33 and 36-69, Petitioner-Plaintiff is being detained in direct violation of the governing statutory and regulatory scheme, as interpreted by the Supreme Court.

89. Defendants-Respondents have denied under erroneous and *ultra vires* authority Plaintiff-Petitioner any bond redetermination hearing or other individualized hearing with constitutionally adequate procedures.

90. Plaintiff-Petitioner is subject to 8 U.S.C. § 1226(a), which applies to "aliens already in the country," and not 8 U.S.C. § 1225, which applies to "arriving aliens" at the border. *See Jennings v. Rodriguez*, 583 U.S. 281, 281 (2018).

91. Additionally, nothing in Plaintiff-Petitioner's criminal history or other history provides any basis or justification for his continued detention and/or denial of a bond redetermination hearing or other individualized hearing with constitutionally adequate procedures.

92. Continued detention of Plaintiff-Petitioner is therefore not in accordance with law, in

excess of statutory authority, and without observance of procedure required by law.

93. As a direct and proximate result of his wrongful, unlawful, and *ultra vires* detention by Defendants-Respondents absent any meaningful bond redetermination hearing or other individualized and constitutionally adequate hearing under 8 U.S.C. § 1226(a), Plaintiff-Petitioner has suffered and will continue to suffer injury.

COUNT IV

VIOLATION OF ADMINISTRATIVE PROCEDURE ACT

Arbitrary & Capricious Deprivation of Liberty

94. Plaintiff-Petitioner adopts, repeats, and realleges all foregoing allegations in Paragraphs 1-72 above as though fully stated and set forth herein.

95. Under § 706(a) of the APA, final agency action can be set aside if it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," including if it fails to make a rational connection between the facts found and the decision made. *See* 5 U.S.C. § 706(2)(A).

96. Defendants-Respondents have failed to articulate any facts or sufficient legal authority that forms a basis for their decision to detain Plaintiff-Petitioner let alone any rational connection between the facts found and their adverse decision made.

97. Due to the lack of any meaningful bond redetermination hearing, Defendants-Respondents have made no determinations of fact at issue.

98. As discussed, *supra*, at Paragraph Nos. 23-33 and 36-69, Petitioner-Plaintiff is being detained in direct violation of the governing statutory and regulatory scheme, as interpreted by the Supreme Court. Plaintiff-Petitioner's continued detention absent any meaningful bond redetermination hearing or other individualized and constitutionally adequate hearing under 8

U.S.C. § 1226(a) is unlawful.

99. The adverse action by Defendants-Respondents is therefore arbitrary and capricious.

100. As a direct and proximate result of his wrongful, unlawful, and *ultra vires* detention by Defendants-Respondents absent any meaningful bond redetermination hearing or other individualized and constitutionally adequate hearing under 8 U.S.C. § 1226(a), Plaintiff-Petitioner has suffered and will continue to suffer injury.

COUNT V

VIOLATION OF FIFTH AMENDMENT

Procedural Due Process

101. Plaintiff-Petitioner adopts, repeats, and realleges all foregoing allegations in Paragraphs 1-72 above as though fully stated and set forth herein.

102. Procedural due process requires that the government be constrained before it acts in a way that deprives individuals of liberty interests protected under the Due Process Clause of the Fifth Amendment to the United States Constitution.

103. To determine whether a civil detention violates a detainee's due process rights, courts apply the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976).

104. Pursuant to *Mathews*, courts weigh the following three factors: (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, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335.

105. Petitioner-Plaintiff has a significant interest at stake. Being free from physical detention

by one's own government "is the most elemental of liberty interests." *See Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004).

106. Petitioner-Plaintiff is being held in the same conditions as criminal inmates and is far from his community and family which desperately requires both his financial assistance and logistical support.

107. There is a large risk of erroneous deprivation of Petitioner-Plaintiff's liberty interest through the procedures used in this case (in this case none) and there are available alternative procedures which would ameliorate those risks.

108. The risk of deprivation is high because, contrary to law, Defendants-Respondents refuse to afford Plaintiff-Petitioner any meaningful bond redetermination hearing or other individualized and constitutionally adequate hearing under 8 U.S.C. § 1226 and 8 C.F.R. §§ 1003.19(i)(2).

109. Defendants-Respondents have not determined Petitioner-Plaintiff to be flight risk or danger to the community or any other individualized factors; rather, they have unliterally deprived Plaintiff-Petitioner of his liberty based upon an erroneous reinterpretation of legal authority that strains credulity and runs against the grain of long-standing precedent, existing statutory and regulatory authority, and established agency policies and practices as well as an overwhelming amount of District Court authority holding same detention is unlawful.

110. There are no significant governmental interest at stake related to Plaintiff-Petitioner's continued detention because his availability for removal proceedings may be secured by less restrictive means, i.e., bond, in light of the fact that Plaintiff-Petitioner is unquestionably neither a danger to any community nor a flight risk as well as the high likelihood he will succeed in obtaining favorable relief in his removal proceedings.

111. As a direct and proximate result of the violation of Plaintiff-Petitioner's procedural due

process rights, Plaintiff-Plaintiff has suffered and will continue to suffer injury.

COUNT VI

VIOLATION OF ADMINISTRATIVE PROCEDURE ACT

Procedural Due Process

112. Plaintiff-Petitioner adopts, repeats, and realleges all foregoing allegations in Paragraphs 1-72 above as though fully stated and set forth herein.

113. Under § 706(a) of the APA, final agency action can be set aside if it is "contrary to a constitutional right, power, privilege, or immunity." *See* 5 U.S.C. § 706(2)(B).

114. As discussed, *supra*, at Paragraph Nos. 23-33 and 36-69, Petitioner-Plaintiff is being detained in direct violation of the governing statutory and regulatory scheme, as interpreted by the Supreme Court.

115. Defendants-Respondents have deprived Plaintiff-Petitioner of his liberty without providing any meaningful bond redetermination hearing or other individualized and constitutionally adequate hearing.

116. Continued detention of Plaintiff-Petitioner absent any meaningful bond redetermination hearing or other individualized and constitutionally adequate hearing or sufficient and compelling legitimate government interest constitutes a violation of Due Process Clause of the Fifth Amendment to the United States Constitution.

117. The adverse agency action at issue is therefore necessarily contrary to a constitutional right and thus falls within the ambit of 5 U.S.C. § 706(2)(B).

118. As a direct and proximate result of the unauthorized and unlawful detention alleged herein, Plaintiff-Petitioner has suffered and will continue to suffer injury.

COUNT VII

VIOLATION OF FIFTH AMENDMENT

Substantive Due Process

119. Plaintiff-Petitioner adopts, repeats, and realleges all foregoing allegations in Paragraphs 1-72 above as though fully stated and set forth herein.

120. The Due Process Clause of the Fifth Amendment forbids the Government from indefinitely detaining inadmissible aliens—potentially forever—without a tenable justification.

121. The Fifth Amendment guarantees that no person shall be deprived of liberty without due process of law. U.S. Const. Amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Zadvydas v. Davis*, 533 U.S. 678 (2001).

122. Government detention violates the fundamental substantive Due Process rights guaranteed to non-citizens unless it is either ordered in a criminal proceeding with adequate procedural protections or it falls into "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." *Zadvydas v Davis*, 533 U.S. 678, 690 (citations omitted); *see also Kansas v. Hendricks*, 521 U.S. 346, 356 (1997).

123. Defendants-Respondents have not attempted to show any special justification or compelling governmental interest which would outweigh Plaintiff-Petitioner's constitutional liberty.

124. Defendants-Respondents have not determined Petitioner-Plaintiff to be flight risk or danger to the community or any other individualized factors; rather, they have unliterally deprived Plaintiff-Petitioner of his liberty based upon an erroneous reinterpretation of legal authority that strains credulity and runs against the grain of long-standing precedent, existing statutory and

regulatory authority, and established agency policies and practices as well as an overwhelming amount of District Court authority holding same detention is unlawful.

125. There are no significant governmental interest at stake related to Plaintiff-Petitioner's continued detention because his availability for removal proceedings may be secured by less restrictive means, i.e., bond, in light of the fact that Plaintiff-Petitioner is unquestionably neither a danger to any community nor a flight risk as well as the high likelihood he will succeed in obtaining favorable relief in his removal proceedings.

126. As a direct and proximate result of the violation of substantive due process rights alleged herein, Plaintiff-Plaintiff has suffered and will continue to suffer injury.

PRAYER FOR RELIEF

WHEREFORE Plaintiff-Petitioner respectfully requests the Court enter an Order: (1) mandating that Defendants-Respondents show cause, returnable within three (3) days pursuant to 28 U.S.C. § 2243, as to why the relief requested in this petition should not be granted; (2) issuing a writ of habeas corpus directing Defendants-Respondents to immediately release Plaintiff-Petitioner from custody under reasonable conditions of supervision or, in the alternative, to conduct a bond redetermination hearing or other individualized and constitutionally adequate hearing under 8 U.S.C. § 1226(a) as applied to Plaintiff-Petitioner wherein Defendants-Respondents must demonstrate that continued detention is justified; (3) recording judgment against Defendants-Respondents as to Counts I-VI (4) declaring Plaintiff-Petitioner's continued detention to be contrary to law, arbitrary and capricious, and violative of the Fifth Amendment of the U.S. Constitution; (5) awarding Plaintiff-Petitioner his reasonable costs and attorneys' fees incurred in this action in accordance with the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d)(2); and (6) granting such other and further relief as this Court deems appropriate, just, or equitable

under the circumstances.

Date: December 11, 2025

Respectfully submitted,

THE RUIZ LAW FIRM, PLLC

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Attorney for Plaintiff-Petitioner

28 U.S.C. § 2242 VERIFICATION STATEMENT

I represent Plaintiff-Petitioner, Hector Miguel Aguilar Rosado, 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.

/s/ Elisabeth Ruiz
ELISABETH RUIZ, ESQ.
Attorney for Plaintiff-Petitioner

DISCLOSURE STATEMENT

Undersigned counsel hereby certifies under Fed. R. Civ. P. 7.1, the following full and complete list of all parties, all officers, directors, or trustees of parties, and all other persons, associations of persons, firms, partnerships, subsidiary or parent corporations, or organizations which have a financial interest in, or another interest which could be substantially affected by, the outcome of the particular case, including any parent or publicly-held corporation that holds ten percent (10%) or more of a party's stock:

BONDI, Pamela (Respondent);

LYONS, Todd (Respondent);

NOEM, Kristi (Respondent);

DE ANDA YBARRA, Mary (Respondent);

United States DEPARTMENT OF JUSTICE ("USDOJ");

United States DEPARTMENT OF HOMELAND SECURITY ("DHS");

United States IMMIGRATION & CUSTOMS ENFORCEMENT ("ICE");

RUIZ, Elisabeth (counsel for Petitioner);

AGUILAR ROSADO, Hector Miguel (Petitioner).

/s/ Elisabeth Ruiz
ELISABETH RUIZ, ESQ.
Attorney for Plaintiff-Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 11, 2025, the foregoing was electronically filed with the Clerk of Court by causing a copy to be electronically filed via the CM/ECF system, which will send notice of the filing to all attorneys of record.

/s/ Elisabeth Ruiz
ELISABETH RUIZ, ESQ.
Attorney for Plaintiff-Petitioner