UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

NERY VIDAL REMIREZ ZAPET; DONALD ESTUARDO BRAVO CABRERA Petitioners, vs. LADEON FRANCIS, *ICE Atlanta Field Office Director*; and TODD LYONS, *in his official capacity as Acting Director of Immigration and Customs Enforcement*; and KRISTI NOEM, *Secretary of Homeland Security* And PAMELA BONDI, *U.S. Attorney General.* Respondents.	)	CASE NO.:

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATIVE AND INJUNCTIVE RELIEF

I. INTRODUCTION

1. This Petition challenges the ongoing and unlawful detention of Petitioners, Nery Vidal Ramirez Zapet and Donald Estuardo Bravo Cabrera ("Petitioners"), by U.S. Immigration and Customs Enforcement (ICE) at 180 Ted Turner Drive, SW, Suite 241 Atlanta, GA 30303. Although Petitioners' names do not appear in the ICE Locator system, this information has been confirmed by

Petitioner Zapet's wife, who has provided details about his current location and detention. Petitioner is neither a flight risk nor a danger to the community.

2. Petitioners' continued detention by ICE is unlawful and unconstitutional. The government's recent policy shift—reclassifying noncitizens who entered without inspection as "arriving aliens" subject to mandatory detention under 8 U.S.C. § 1225(b)—contradicts the statute, decades of established statutory interpretation, agency regulations and practice, and binding precedent. Petitioner, apprehended in the interior years after entry, is entitled to discretionary bond hearings under 8 U.S.C. § 1226(a), not mandatory detention without judicial review. See Exhibit 1 current list of over 240 district courts from around the country agreeing with Petitioners, including several recent cases from this district, NDGA.

3. On December 8th, 2025, Petitioners were stopped by local law enforcement while driving to work, both of them in the same car, without any observed traffic violation or articulable suspicion of criminal activity. Officers reportedly justified the stop solely on the basis of Petitioners "looking Hispanic." There was no warrant for their arrest no probable cause. Such conduct constitutes an

unconstitutional seizure under the Fourth Amendment, as race or ethnicity cannot serve as a lawful basis for a traffic stop or investigatory detention (*Whren v. United States*, 517 U.S. 806 (1996)). Any subsequent transfer to ICE custody is tainted by this initial illegality, rendering Petitioners' current detention unlawful and the only appropriate remedy is immediate release. Petitioners' names do not appear in the ICE Locator system, therefore we are unable to confirm status or location through official channels.

4. Despite being apprehended within the interior of the United States long after arrival rather than at the border, Petitioners are currently not being considered for bond due to their entry without inspection. This stems from a controversial policy shift by ICE in July 2025, which aligns with a recent Board of Immigration Appeals (BIA) decision. This decision disrupts decades of established legal precedent by introducing a novel interpretation of the Immigration and Nationality Act (INA). This interpretation, which contradicts both the statute's clear language and constitutional principles, reclassifies all noncitizens who entered without inspection, including the Petitioners, as "arriving aliens" or "applicants for admission." Consequently, they are subject to mandatory detention under 8 U.S.C. § 1225(b), rendering them

ineligible for bond hearings by immigration judges.

5. While § 1225 mandates detention without bond for noncitizens apprehended at the border as "seeking admission," it does not apply to those like the Petitioners, who were detained within the United States long after arrival here. Therefore, the Petitioners seek a declaratory judgment from this Court affirming that their detention should be under 8 U.S.C. § 1226(a). The Petitioners requests an order for their immediate release due to the unlawful arrest. Additionally, Petitioners request that Respondents be prohibited from re-detaining Petitioners unless there are changed circumstances warranting re-arrest as detailed below.

6. Respondents' actions violate the Due Process Clause of the Fifth Amendment to the U.S. Constitution by depriving Petitioners of liberty without individualized assessment or a meaningful opportunity to be heard before a neutral decisionmaker. The agencies' interpretation also contravenes the INA and its implementing regulations, the Administrative Procedure Act (APA), and the *Accardi* doctrine, which obligates administrative agencies to follow their own rules, procedures, and instructions. Numerous federal courts have rejected the government's novel reading of the detention statutes, reaffirming that interior

apprehensions are governed by § 1226(a) and entitled to bond review.

7. Petitioners seek immediate habeas, declaratory, and injunctive relief, ordering Respondents to be directed to immediately release Petitioners from custody. A detailed statement of facts and procedural history follows, supporting Petitioners' claims for relief.

II. JURISDICTION

8. This Court has jurisdiction under several legal provisions, including 28 U.S.C. § 2241, which grants federal courts the authority to issue writs of habeas corpus, and 28 U.S.C. § 1331, which provides for federal question jurisdiction. Jurisdiction over habeas claims is conferred by 28 U.S.C. § 2241, while non-habeas claims for declaratory and injunctive relief arise under 28 U.S.C. § 1331, the APA, and the Declaratory Judgment Act.

9. Additionally, jurisdiction is supported by Article I, § 9, cl. 2 of the Constitution, known as the Suspension Clause, and Article III, Section 2, which addresses the Court's authority to hear constitutional issues raised by the Petitioners. Petitioners seek immediate judicial intervention to address ongoing violations of constitutional rights by the Respondents. This action is grounded

in the United States Constitution, the Immigration & Nationality Act of 1952, as amended (INA), 8 U.S.C. § 1101 *et seq.*, and the APA, 5 U.S.C. § 551 *et seq.* Furthermore, the Court may also exercise jurisdiction under 28 U.S.C. § 1331, as the action arises under federal law, and may grant relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

10. The Court has authority to issue a declaratory judgement and to grant temporary, preliminary and permanent injunctive relief pursuant to Rules 57 and 65 of the Federal Rules of Civil Procedure (FRCP), as well as 28 U.S.C. §§ 2201-2202. Additionally, the Court can utilize the All Writs Act and its inherent equitable powers to provide such relief. Furthermore, the Court has the authority to issue a writ of habeas corpus pursuant to 28 U.S.C. § 2241.

11. This Court possesses federal question jurisdiction under the APA to "hold unlawful and set aside agency action" deemed "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," as outlined in 5 U.S.C. § 706(2)(A). In the absence of a specific statutory review process, APA review of final agency actions can proceed through "any applicable form of legal action," which includes actions for declaratory judgments, writs of

prohibitory or mandatory injunction, or habeas corpus, in a court of competent jurisdiction, as specified in 5 U.S.C. § 703.

12. In *I.N.S. v. St. Cyr*, the Supreme Court held that federal courts retain *habeas corpus* jurisdiction under 28 USC § 2241, despite restrictions on judicial review enacted under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) and the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). 533 U.S. 289 (2001). Consequently, section 2241 habeas review remains available to Petitioners.

13. The U.S. Supreme Court has recognized district courts' jurisdiction to entertain habeas petitions raising colorable constitutional claims—including those alleging deprivation of liberty without due process, arbitrary or indefinite detention, and agency action contrary to law. Even though the government may detain individuals during removal proceedings, *Denmore v. Kim*, 538 U.S. 510, (2003) (although that case involved detention under §1226(c) of certain criminal aliens), there are limitations to this power of the executive branch. Limitations like the Due Process Clause restrict the Government's power to detain noncitizens. It is well settled that individuals in deportation proceedings are entitled to due process of law under the Fifth Amendment. *Reno v. Flores*, 507

U.S. 292, 306, (1993). Courts must review immigration procedures and ensure that they comport with the Constitution.

14. Federal courts have retained the statutory authority to grant writs of habeas corpus since enactment of the Judiciary Act of 1789. In *Felker v. Turpin*, 518 U.S. 651 (1996), the Supreme Court declined to find a repeal of § 2241 by implication as to its original habeas corpus jurisdiction. See also *Boumediene v. Bush,* 553 U.S. 723 (2008). In addition to the Supreme Court in many cases, all Circuit Courts of Appeals have recognized district courts' jurisdiction to entertain habeas petitions raising colorable constitutional claims—including those alleging deprivation of liberty without due process, arbitrary or indefinite detention, and agency action contrary to law.

15. In this case, Petitioners assert substantial constitutional violations—including deprivation of liberty without due process, arbitrary and capricious agency action, violations of the *Accardi* doctrine, and other injuries without notice or opportunity to be heard. These claims fall squarely within the scope of habeas review preserved by statute and recognized by controlling precedent. Accordingly, this Court has both the authority and the obligation to adjudicate the constitutional and statutory claims presented in

this Petition and to grant appropriate relief to remedy ongoing violations of Petitioners' rights.

16. Petitioners' claims challenge only his civil immigration detention and the procedures used to prolong it—not the merits of removability or any final order of removal—and therefore fall outside 8 U.S.C. § 1252(b)(9)'s channeling provision. *See Jennings v. Rodriguez*, 138 S. Ct. 830, 840–41 (2018) (detention challenges are not "questions of law or fact arising from" removal proceedings). Consistent with that framing, any injunctive relief sought here is strictly as-applied to Petitioners—for example, directing Petitioners' release under § 1226(a) or barring application of § 1225 as to Petitioners —and does not "enjoin or restrain the operation" of any statute within § 1252(f)(1)'s bar. In any event, § 1252(f)(1) permits individualized, as-applied relief for a single noncitizen, even while prohibiting class-wide injunctions. *See Garland v. Aleman Gonzalez*, 596 U.S. 543, 548–49 (2022).

17. Section 1252(f)(1) does not bar the individualized injunctive relief sought here. That provision limits lower courts' authority to "enjoin or restrain the operation" of the INA's detention and removal provisions on a class-wide or programmatic basis but expressly preserves injunctive relief "with respect to the

application of such provisions to an individual alien against whom proceedings under such part have been initiated." 8 U.S.C. § 1252(f)(1); *Garland v. Aleman Gonzalez*, 596 U.S. 543, 548–50 (2022). Petitioners seeks only as-applied relief tailored to Petitioners —e.g., directing Petitioners' release under § 1226(a) or precluding DHS from enforcing the "arriving alien" definition of § 1225 toward Petitioners. That relief neither halts the general operation of any INA provision nor provides class-wide relief and thus falls squarely within § 1252(f)(1)'s carve-out.

18. Section 1252(g) is likewise inapplicable. It is a "narrow" jurisdictional bar that applies only to three discrete decisions or actions: "to commence proceedings, adjudicate cases, or execute removal orders." *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999). Petitioners does not challenge any such decision. Petitioners challenges ongoing civil detention and DHS's use of an unlawful interpretation to nullify the plain language of the INA and its regulations as applicable to these agencies. Such detention-related claims and challenges to custody procedures fall outside § 1252(g). *See id.* at 482–83; cf. *Jennings v. Rodriguez*, 138 S. Ct. 830, 840–41 (2018) (§ 1252(b)(9) does not channel detention claims).

19. Section 1252(e)(3) is likewise inapplicable as it is narrowly tailored to channel systemic or facial challenges to the validity of the expedited removal "system" or its implementing regulations and written policies to the U.S. District Court for the District of Columbia, and only within 60 days of implementation. It does not bar as-applied, individualized habeas challenges to the legality or constitutionality of a particular noncitizen's detention under § 1225(b)(2) or whether § 1225 governs Petitioners' detention or § 1226. The text of § 1252(e)(3) is explicit: it covers "[c]hallenges on the validity of the system" and review of "whether such a regulation, or a written policy directive, written policy guideline, or written procedure ... is not consistent with applicable provisions of this title or is otherwise in violation of law." It does not preclude review of the legality of detention as applied to a specific individual, nor does it bar habeas review of constitutional claims or claims that the government is misapplying the statute in a particular case.

20. **To prevent ouster of this Court's habeas jurisdiction, the Court should, pursuant to 28 U.S.C. § 1651(a) (All Writs Act) and 28 U.S.C. § 2241, issue an immediate limited order prohibiting Respondents from transferring Petitioners**

outside the court's District or otherwise changing Petitioners' immediate custodian without prior leave of Court while this action is pending. Such relief is necessary in aid of jurisdiction because habeas is governed by the district-of-confinement/immediate-custodian rule, and transfer can frustrate effective review. *See Rumsfeld v. Padilla*, 542 U.S. 426, 441–42 (2004); *Ex parte Endo*, 323 U.S. 283, 307 (1944); *FTC v. Dean Foods Co.*, 384 U.S. 597, 603–05 (1966).

III. VENUE

21. Venue is proper in the United States District Court for the Northern District of Georgia because Petitioners are currently detained at the ICE Field Office at 180 Ted Turner Drive SW, Atlanta, Georgia, under the custody of the Department of Homeland Security (DHS). Habeas petitions generally are filed in the district court with jurisdiction over the filer's place of custody, also known as the district of confinement, pursuant to 28 U.S.C. § 2241. Additionally, with respect to Petitioners' non-habeas claims seeking prospective declaratory and injunctive relief against federal officials (agencies and officers of the United States) sued in their official capacities, venue is proper under 28 U.S.C. §

1391(e)(1)(B) because a substantial part of the events or omissions giving rise to these claims, including the initial arrest and continued detention of Petitioners and the enforcement of the mandatory detention agency interpretation, occurred in this District. Furthermore, the Respondents are officers of United States agencies, the Petitioners resides within this District, and there is no real property involved in this action.

IV. JOINDER

22. Petitioners seek a joinder under F.R.C.P. Rule 20. A party seeking joinder of claimants under Rule 20 must establish two prerequisites: (1) a right to relief arising out of the same transaction or occurrence, or series of transactions or occurrences, and (2) some question of law or fact common to all persons seeking to be joined. . . ."all 'logically related' events entitling a person to institute a legal action against another generally are regarded as comprising a transaction or occurrence." *Mosley*, 497 F.2d at 1333.

23. Here, "the same operative facts serve as the basis" for the joined claims. *Republic Health Corp. v. Lifemark Hosps. of Fla., Inc.*, 755 F.2d 1453, 1455 (11th Cir. 1985). Both Petitioners were in the same car, both Petitioners were unlawfully detained by ICE and

both Petitioners are currently detained at 180 Ted Turner Drive. Both Petitioners arrived without inspection several years ago and were now apprehended in the interior.

V. PARTIES

24. Petitioner Nery Vidal Ramirez Zapet, is a 40-year-old noncitizen who has lived in the United States for many years, over 10 years ago. He entered the country without inspection and has never been the subject of a prior removal order nor any immigration petition. He resides in Georgia with his long-term partner, and their two U.S. citizen children, ages 13 and 4. Petitioner has worked consistently in landscaping for the past four years.

25. Petitioner Donald Estuardo Bravo Cabrera arrived to the United States a few years ago at an unknown date. He entered the country without inspection and has never been the subject of a prior removal order nor any immigration petition. He resides in Georgia and also works in landscaping.

26. Respondent Ladeon Francis is the Atlanta Field Office Director (FOD) for ICE. As such, Respondent Francis is responsible for the oversight of ICE operations at 180 Ted Turner Drive SW. Respondent Francis is being sued in his official capacity. He is the

head of the ICE office that unlawfully arrested Petitioners, and such arrest took place under his direction and supervision. He is the immediate *legal* custodian of Petitioners.

27. Respondent Todd Lyons is the Acting Director of Immigration and Customs Enforcement (ICE). As such, Respondent Lyons is responsible for the oversight of ICE operations and the head of the federal agency responsible for all immigration enforcement in the United States. Respondent Lyons is being sued in his official capacity.

28. Respondent Kristi Noem is the Secretary of the Department of Homeland Security (DHS). As Secretary of DHS, Secretary Noem is the cabinet-level official responsible for the general administration and enforcement of the immigration laws of the United States. Respondent Secretary Noem is being sued in her official capacity.

29. Respondent Pamela Bondi is the Attorney General of the United States and is sued in her official capacity since U.S. government agencies are Respondents in this complaint. Furthermore, the Immigration Judges who decide removal cases and applications for bond and relief from removal do so as her designees at the Executive Office for Immigration Review (EOIR).

30. Petitioners names certain federal officials in their official capacities solely to preserve alternative, non-habeas avenues for prospective relief—such as as-applied declaratory and injunctive orders under 28 U.S.C. § 1331, the APA's waiver of sovereign immunity, 5 U.S.C. § 702, the Declaratory Judgment Act, 28 U.S.C. §§ 2201–2202, and the All Writs Act, 28 U.S.C. § 1651—necessary to enjoin enforcement of DHS regulations and their interpretation as applied to Petitioners, ensure compliance with DHS/EOIR custody regulations, prevent transfer or removal of Petitioners, and effectuate any release the Court orders at the agency level where policy and implementation authority reside. See, e.g., *Larson v. Domestic & Foreign Commerce Corp.*, 337 U.S. 682 (1949); *Dugan v. Rank*, 372 U.S. 609 (1963).

31. Petitioners acknowledge, consistent with *Rumsfeld v. Padilla*, 542 U.S. 426 (2004), that the proper respondent to the habeas claim is the immediate custodian, and does not rely on the federal officials as "habeas respondents." Rather, Petitioners name these federal officials in their official capacities solely to ensure that the Court can issue effective relief on non-habeas claims, such as declaratory and injunctive relief, and to direct agency action to those with actual authority to implement it. Should the Court find these

officials improper as respondents to the habeas count, Petitioners respectfully request that any dismissal be limited to that claim and without prejudice to their continued status as respondents for the non-habeas claims. Maintaining these officials as parties is necessary to ensure that, if relief is granted, the responsible agency officials cannot simply re-arrest Petitioners or otherwise frustrate the Court's order by invoking their erroneous interpretation of the INA. This approach is consistent with *Padilla* and ensures that the Court's orders are both effective and enforceable.

VI. STATEMENT OF FACTS AND PROCEDURAL HISTORY

32. Petitioner Nery Vidal Ramirez Zapet, is a 40-year-old noncitizen who has lived in the United States for many years, over 10 years ago. He entered the country without inspection and has never been the subject of a prior removal order nor any immigration petition. He resides in Georgia with his long-term partner, and their two U.S. citizen children, ages 13 and 4. Petitioner has worked consistently in landscaping for the past four years. He has no criminal history and is a longstanding, hardworking member of his community.

33. Petitioner Donald Estuardo Bravo Cabrera arrived to the United States a few years ago at an unknown date. He entered the country without inspection and has never been the subject of a prior removal order nor any immigration petition. He resides in Georgia and also works in landscaping. He has no criminal history.

34. On December 8th, 2025, Petitioners were arrested by ICE without a warrant and are currently detained at 180 Ted Turner Drive, SW, Atlanta, GA 30303, after being stopped by local law enforcement while driving to work. Although his name does not appear in the ICE Locator system, this information has been confirmed by Petitioner Zapet's wife, who has provided details about his current location and detention.

35. Petitioners were arrested in the interior of the United States several years after entry. They are both IMPROPERLY detained under 8 U.S.C. § 1226(a), because their arrest was done without a warrant or probable cause. While the government may detain noncitizens it encounters in the interior of the Country under 8 U.S.C. § 1226(a), such arrest must be accompanied by a warrant. Even after someone's arrest, they are eligible for a bond hearing before an Immigration Judge (IJ) or release on recognizance. Nevertheless, Respondents have classified him as an "arriving

alien" and detained him under 8 U.S.C. § 1225(b)(2)—rendering him ineligible for bond under their new, unlawful policy.

36. Petitioners' arrest was executed without a warrant, probable cause, or exigent circumstances, in direct contravention of 8 U.S.C. § 1357(a)(2), which authorizes warrantless arrests for civil immigration violations only when there is probable cause of unlawful presence and a likelihood of escape before a warrant can be obtained. The facts alleged demonstrate that ICE officers lacked any specific, articulable suspicion linking Petitioners to criminal activity or flight risk, relying instead on generalized assumptions and impermissible factors such as ethnicity or mere presence in a surveilled location. Such conduct violates well-established Fourth Amendment jurisprudence, which prohibits law enforcement from stopping or arresting individuals based solely on ethnicity, appearance, or location, and requires individualized suspicion for any seizure of liberty.

37. This unlawful arrest is not a mere procedural defect; it is a substantive violation that taints all subsequent detention and proceedings. The exclusionary rule and the "fruit of the poisonous tree" doctrine mandate suppression of all evidence and proceedings derived from an unconstitutional arrest, and courts

have repeatedly held that subsequent issuance of a Notice to Appear or initiation of removal proceedings does not cure the original violation. The ongoing detention of Petitioner, predicated on this unlawful arrest, thus presents a new and unresolved question of law and fact that demands judicial review.

38. Petitioners' continued detention is based solely on ICE's erroneous classification of similar noncitizens as an "arriving alien" or "applicant for admission", subject to mandatory detention under 8 U.S.C. § 1225(b). Petitioners were apprehended in the interior of the United States almost years after entry, and therefore their detention should be governed by 8 U.S.C. § 1226(a), which allows for discretionary release on bond or recognizance.

39. Because all Respondents continue to treat Petitioners as detained under § 1225(b), any request for bond redetermination before an Immigration Judge would be futile, as the Immigration Court has already disclaimed jurisdiction over such requests. Accordingly, habeas relief is the only available and effective remedy to secure Petitioners' release or a lawful custody hearing.

40. Petitioners are neither a danger nor a flight risk. Less-restrictive alternatives remain available and adequate such as release on recognizance or posting a low bond.

41. Prolonged detention under these circumstances imposes unnecessary hardships on Petitioners and their families, depriving them of financial and emotional support, and violating Petitioners' right to due process and freedom from arbitrary detention.

42. Upon information and belief, as of the time of filing of this Writ of Habeas, Petitioners remains confined at 180 Ted Turner Drive, SW, Atlanta, GA 30303 solely because of ICE's invocation of its new interpretation that Petitioners is an "arriving alien" or "applicant for admission" and is therefore subject to mandatory detention. Even if Petitioners were to file for a bond redetermination with the immigration judge, they would deny it pursuant to *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216. All Respondents consider that all noncitizens who entered without inspection are detained pursuant to 8 U.S.C. § 1225(b)(2). Accordingly, it would be futile for Petitioners to request a bond for release from an IJ. Due to the binding nature of *Matter of Yajure Hurtado*, all immigration courts known to counsel are denying bond requests for similarly situated noncitizens, making habeas the only effective remedy. Similarly, even in cases an IJ would grant bond, ICE would appeal it which would leave Petitioners incarcerated through the appeal, which would take months and

end up dismissed based on *Yajure Hurtado.*

VII. EXHAUSTION OF REMEDIES

43. **No statutory exhaustion requirement applies to habeas cases,** and the recent interpretations by DHS and EOIR have effectively closed all administrative avenues for securing release for noncitizens, like Petitioners, who entered the U.S. without inspection. ICE's internal policy from July 2025, coupled with the EOIR's Board of Immigration Appeals (BIA) precedent, mandates that immigration judges deny bond to the Petitioners and similarly situated noncitizens, rendering any further administrative steps futile. An administrative remedy may be inadequate where the administrative body is shown to be biased or has otherwise predetermined the issue before it as noted in *Gibson v. Berryhill*, 411 U. S. 564, 575, n. 14 (1973). Requiring Petitioners to seek reconsideration with ICE or a bond hearing with an immigration judge "would be to demand a futile act" as no relief would be granted while Petitioners languish in detention, as highlighted in *Houghton v. Shafer*, 392 U.S. 639, 640 (1968). Moreover, even if any remedies were available, the habeas statute does not require Petitioners to exhaust them.

44. Furthermore, even if applied, the doctrine of exhaustion of administrative remedies would have been futile on claim attacking constitutionality of ICE's actions and ICE's and EOIR's current interpretations of the mandatory detention provisions. Administrative hearings cannot address the constitutional claims at issue, rendering further proceedings ineffective. Moreover, where ICE seeks to quickly remove noncitizens like Petitioners even to third countries, without due process, particularly under the current administration's policies, underscores the inadequacy of administrative remedies. *McCarthy v. Madigan*, 503 U.S. 140, 146–49 (1992) (futility exception to exhaustion applies where administrative remedies are inadequate or unavailable). Thus, pursuing such remedies would be an exercise in futility, as they fail to provide any meaningful opportunity to address the constitutional violations at hand.

45. Petitioners have exhausted their administrative remedies to the extent required by law, and Petitioners' only remedy is by way of this judicial action.

VIII. UNLAWFUL ARREST AND ITS CONSEQUENCES

46. Petitioners' arrest was unlawful under both statutory and constitutional standards. ICE officers arrested Petitioners without a warrant, without probable cause, and without exigent circumstances as they were driving in the same car on their way to work. There were no specific, articulable facts linking them to criminal activity or exigent circumstances other than their appearance or race. The arrest had occurred—without a warrant, individualized suspicion, or any evidence of flight risk or exigency.

47. The Fourth Amendment prohibits law enforcement from stopping or arresting individuals based solely on ethnicity, appearance, language, or mere presence in a particular location. The Supreme Court has repeatedly held that "Mexican appearance" or similar ethnic characteristics alone are never sufficient to justify a stop, even near the border. Officers must have "specific articulable facts" that reasonably suggest a person is engaged in unlawful activity—generalizations or stereotypes are not enough. See *United States v. Brignoni-Ponce*, 422 U.S. 873, 886–87 (1975); *Reid v. Georgia*, 448 U.S. 438, 441 (1980). The Supreme Court recently reaffirmed that "[t]o be clear, **apparent ethnicity alone cannot furnish**

reasonable suspicion." *Noem v. Vasquez Perdomo*, --- S.Ct. ----, 2025 WL 2585637, at *3 (2025).

48. Moreover, under 8 U.S.C. § 1357(a)(2), ICE may only make a warrantless arrest for a civil immigration violation if there is both probable cause of unlawful presence and probable cause that the person is likely to escape before a warrant can be obtained. Courts have repeatedly held that mere unlawful presence is a civil, not criminal, violation, and that suspicion or knowledge of a civil immigration violation does not provide probable cause for a criminal arrest or for prolonged detention. See *United States v. Pacheco-Alvarez*, 227 F. Supp. 3d 863, 872–73 (S.D. Ohio 2016). The government's failure to meet the statutory and constitutional prerequisites for a warrantless arrest rendered both the arrest and all derivative evidence unlawful and subject to suppression.

49. The government's subsequent issuance of a Notice to Appear or initiation of removal proceedings does not cure the original constitutional violation. The exclusionary rule and the "fruit of the poisonous tree" doctrine require suppression of all evidence obtained as a result of an unlawful arrest. See *Wong Sun v. United States*, 371 U.S. 471, 484–88 (1963); *Silverthorne Lumber Co. v. United States*, 251 U.S. 385, 392 (1920). Courts have repeatedly

held that a warrant obtained after an illegal arrest, or the subsequent initiation of removal proceedings, does not cure the original constitutional violation. See *Rosado v. Figueroa*, No. CV-25-02157-PHX DLR, 2025 WL 2337099, at *19 (D. Ariz. Aug. 11, 2025) (ordering immediate release where detention was based on an unlawful arrest and all evidence and proceedings derived therefrom were suppressed).

50. In sum, Petitioners' arrest is both legally and constitutionally insufficient. The only effective and constitutionally sufficient remedy for these ongoing violations is immediate and unconditional release—not a bond hearing, not further process, and not continued detention under a different label.

IX. UNLAWFUL ARREST LEGAL AUTHORITY

51. The necessity of a hearing on the unlawful arrest issue is firmly supported by controlling legal authority. The Fourth Amendment prohibits unreasonable searches and seizures, and the Supreme Court has held that ethnicity alone cannot furnish reasonable suspicion for a stop or arrest. See *United States v. Brignoni-Ponce*, 422 U.S. 873, 886–87 (1975); *Reid v. Georgia*, 448 U.S. 438, 441

(1980). The statutory requirements for warrantless immigration arrests are set forth in 8 U.S.C. § 1357(a)(2), which demands both probable cause and exigency.

52. Where an arrest is unlawful, the exclusionary rule applies with full force, requiring suppression of all evidence and proceedings derived from the unconstitutional act. See *Wong Sun v. United States*, 371 U.S. 471, 484–88 (1963); *Silverthorne Lumber Co. v. United States*, 251 U.S. 385, 392 (1920). Courts have ordered immediate release where detention was based on an unlawful arrest and all derivative evidence was suppressed. *See Rosado v. Figueroa*, No. CV-25-02157-PHX DLR, 2025 WL 2337099, at *19 (D. Ariz. Aug. 11, 2025).

X. LEGAL AND STATUTORY BACKGROUND

A. Noncitizens Are Entitled to Due Process

53. The principle that noncitizens present in the United States must be afforded due process is deeply rooted in our legal history for hundreds of years. *See Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886) (Fourteenth Amendment applies to all persons within the territorial jurisdiction of the United States, regardless of race, color, or nationality); *Mathews v. Diaz*, 426 U.S. 67, 77 (1976)

("Fifth Amendment . . . protects every person within the jurisdiction of the United States from deprivation of life, liberty, or property without due process of law . . . [i]ncluding those whose presence in this country is unlawful, involuntary, or transitory[.]") (citation omitted)).

54. These landmark Supreme Court cases affirm that due process protections apply to all persons within the U.S., regardless of their immigration status. These foundational principles are not merely historical artifacts but are vital, living tenets that must guide current immigration practices. The Court has consistently recognized that noncitizens facing deportation are entitled to due process under the Fifth Amendment, as seen in *Landon v. Plasencia*, 459 U.S. 21 (1982) (noncitizens facing deportation are entitled to due process under the Fifth Amendment, which includes a full and fair hearing and notice of that hearing); *Zadvydas v. Davis*, 533 U.S. 678 (2001) (Due Process Clause applies to all "persons" within the United States, including aliens, whether their presence is lawful, unlawful, temporary, or permanent).

B. The Erosion of Well-Established Immigration Law In 2025

55. The specific type of liberty deprivation suffered by Petitioners is not unique in 2025. Indeed, the recent, dramatic expansion of civil immigration detention powers by the U.S. government, has quietly eroded over 70 years of immigration law history. This expansion has occurred not through explicit legislative change but via broad agency interpretations, leading to a normalization of widespread, unreviewable detention of noncitizens. Tens of thousands of noncitizens are now subject to automatic, non-reviewable loss of liberty, contravening our immigration laws, Supreme Court precedents, and the U.S. Constitution. The vast majority of ICE detainees are non-criminals, like Petitioners[1]. Many others have minor criminal backgrounds.

56. Traditionally, procedural safeguards such as individualized bond hearings and judicial review have served as critical checks against arbitrary detention. Immigration detention decisions involved two procedural layers: an initial custody determination by ICE (or CBP for noncitizens confronted at the border), followed by a custody redetermination (bond hearing) before an IJ, with appellate review by the BIA. **Detention was permitted only upon finding of**

[1] According to the Transactional Records Access Clearinghouse, 71.5% of detainees have no criminal conviction as of September 21, 2025. Immigration Detention Quick Facts, available at: https://tracreports.org/immigration/quickfacts/

flight risk or danger to the community, and noncitizens had the right to challenge their detention before an IJ and seek release on their own recognizance or a bond. With the exception of significant criminal history or extremely negative immigration history, the vast majority of noncitizens in the country were not detained, including those in removal proceedings, who were either released on their own recognizance or ordered to post a bond (most under $5,000), in order to appease DHS that they will show up for their removal hearings. In most cases, ICE attorneys did not object to bond grants and if the IJ ordered a bond, few appeals were being filed. Most noncitizens show up for their hearings, as they want to plead their case and obtain relief from removal and permanent status in the United States.

57. In the initial months of the second Trump administration, ICE abruptly shifted its enforcement strategy, initiating widespread arrests of noncitizens without any individualized assessment of flight risk or danger to the community. These detentions were not incidental; they were executed in a targeted and systematic fashion, often in highly visible public spaces—including churches, schools, during their appearance for ICE reporting and even immigration court hearings where noncitizens appeared for

scheduled proceedings.[2] This approach enabled ICE to detain large groups of individuals en masse, apparently to satisfy newly imposed detention quotas.[3] Notably, ICE disregarded less restrictive and more cost-effective alternatives for ensuring appearance at immigration hearings, such as reporting requirements and electronic ankle monitoring. While an ankle monitor costs the agency approximately $5 to $40 per day, detention costs soar to roughly $1,000 per day for each individual. This policy not only imposes a substantial financial burden on the government, but also results in unnecessary and punitive deprivation of liberty for noncitizens who pose no threat to public safety or risk of absconding.

58. While detention of noncitizens is within the purview of the agency, according to 8 C.F.R. 236.1, a noncitizen who is detained is able to appeal their detention to an IJ and request a bond. Many bonds were still being granted by Immigration Judges around the country, notwithstanding ICE's detention, however that has

[2] "ICE detaining immigrants for long periods in Atlanta field office basement", Atlanta Journal-Constitution, available at: https://www.ajc.com/news/2025/10/ice-detaining-immigrants-for-long-periods-in-atlanta-field-office-basement/

[3] "Downtown ATL holds ICE's newest hellhole. Cruelty is the point" available at: https://www.ajc.com/opinion/2025/10/downtown-atl-holds-ices-newest-hellhole-cruelty-is-the-point/

drastically changed in the last two months. Recent administrative expansions have systematically stripped noncitizens of their fundamental rights to challenge detention, thereby undermining the very fabric of due process protections. In July 2025, ICE has issued a memo to all its employees by stealth, without public disclosure, and without public comment and notice period. *See* Exhibit 2. The exhibit was obtained through the American Immigration Lawyers Association website. According to the new ICE "interpretation", any person who entered without inspection, like Petitioners, is now subject to mandatory detention without bond.

59. If Respondents' interpretation of § 1225 were truly grounded in the plain language and longstanding application of the statute—such that every noncitizen who entered without inspection is categorically subject to mandatory detention—there would have been no need for ICE to issue a stealth, unpublished memo in July 2025, nor to bypass the established regulatory process, including notice-and-comment rulemaking under the APA. The fact that ICE chose to implement this sweeping policy shift through an internal, non-public directive, rather than through transparent rulemaking or publication in the Federal Register, strongly suggests that the

agency itself recognized this was a controversial reinterpretation, not a faithful application of existing law. For decades, both agency practice and BIA precedent consistently treated interior apprehensions of long-term residents as subject to discretionary bond under § 1226(a), not mandatory detention under § 1225(b).

60. The abrupt change in July 2025—implemented without public notice, opportunity for comment, or regulatory justification—undermines Respondents' claim that their reading is compelled by statute. If the law were as clear as Respondents now assert, ICE would have had no reason to conceal its policy shift or avoid the procedural safeguards of the NPRM process. Instead, the agency's actions reflect an attempt to circumvent both statutory requirements and public accountability, further supporting Petitioners' argument that the new interpretation is not only unlawful, but also procedurally and substantively deficient under the APA and the *Accardi* doctrine.

61. Then two EOIR cases supporting the same statutory interpretation followed. The first case that was a published decision by the BIA, *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), held that an applicant for admission arrested and detained without a warrant while arriving in the United States, whether or

not at a port of entry, and subsequently placed in removal proceedings, is detained under section 235(b) of the INA, 8 U.S.C. § 1225(b). This case is inapplicable to Petitioners because it deals with the detention of an "applicant for admission" who is arrested while arriving in the United States. The case is relevant to individuals who are at the border or a port of entry and are seeking admission into the country. It does not apply to those who have already entered the United States and are apprehended within its interior. The second published decision from the BIA, *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), significantly expanded the agency's mandatory detention interpretation to include all noncitizens who enter without inspection, denying them bond hearings under section 236(a) of the INA. The above-mentioned ICE memo, coupled with this decision, which will be discussed below, prevents Petitioners' release and violates Petitioners' Due Process rights.

62. *Matter of Yajure Hurtado* reclassified all Entrants Without Inspection (EWIs) as "arriving aliens" and denied bond eligibility, overturning decades of precedent and agency guidance that had consistently applied § 1226(a) to interior apprehensions. The sudden change not only contradicts the statutory structure and

legislative history, but also renders the separate inadmissibility charges superfluous, demonstrating that Congress never intended § 1225 to govern long-term residents apprehended far from any inspection point. The prior BIA decisions and longstanding EOIR guidance—consistently granted bond to such individuals, confirming that the government's new position is a radical departure from decades of established law and practice. See, for example, *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).

C. Immigration Detention Legal Framework

63. When a noncitizen is alleged to have violated immigration laws, they are generally placed into traditional removal proceedings, during which an immigration judge has to determine whether they are removable and then whether they have a legal basis to remain in the United States. 8 U.S.C. § 1229a.

64. Detention is authorized for "certain aliens already in the country pending the outcome of removal proceedings under § 1226(a) and § 1226(c)." See *Jennings v. Rodriguez*, 584 U.S. 281, 289 (2018). The INA provides that an individual may be subject to either discretionary detention under 8 U.S.C. § 1226(a) generally, or mandatory detention under 8 U.S.C. § 1226(c) if they have been arrested or convicted of certain crimes. Discretionary relief under

§ 1226(a) has been described as the "default" provision for immigration detention for those subject to traditional removal proceedings. *Id.* at 288. Under § 1226(a), "except as provided in subsection (c)" (which refers to certain criminal aliens), the Attorney General "may release the alien on" "bond" ... or "conditional parole." *Id.*

65. Discretionary detention under 8 U.S.C. § 1226(a) applies equally to noncitizens who entered legally with a visa or for those who entered without inspection, like the Petitioners. This provision grants the Attorney General the authority to arrest and detain any noncitizen pending a decision on their removal from the United States. **The statute explicitly allows for the detention of noncitizens regardless of their manner of entry, as it does not distinguish between those who entered with inspection and those who did not.** The discretionary nature of § 1226(a) is further supported by case law, such as *Jennings v. Rodriguez*, 583 U.S. 281, 300 (2018), which emphasizes that the use of the word "may" in the statute implies discretion rather than a mandate. Additionally, the Ninth Circuit in *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1202 (9th Cir. 2022), recognized that § 1226(a) provides extensive procedural protections, including bond

hearings, **to all noncitizens detained under this provision, irrespective of their entry status**. This interpretation ensures that all noncitizens, whether they entered legally or without inspection, are subject to the same discretionary detention framework under § 1226(a).

66. Other than certain criminal aliens, mandatory detention is authorized for "certain aliens ***seeking admission*** into the country under §§ 1225(b)(1) and 1225(b)(2)," [emphasis added]. *Jennings*, 583 U.S. at 289. Individuals inspected under § 1225(b) and determined to be "applicants for admission" may be subject to mandatory detention under two separate subsections. Applicants for admission include someone who is:

> "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." § 1225(a)(1)

67. Under §§1225(b)(1), if someone is determined to be an "arriving alien", they may be subject to removal and mandatory detention (if they have not been physically present in the United States continuously for a two-year period immediately prior.) Regulations define an "arriving alien" as:

> "an applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry, or an alien interdicted in international or United States waters and brought into the United States by any means, whether or not to a designated port-of-entry, and regardless of the means of transport."
>
> 8 C.F.R. § 1.2.

68. Otherwise, 8 U.S.C. § 1225(b)(2) provides for the detention of "applicant for admission" specifically when "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," i.e. for traditional removal proceedings [emphasis added].

69. An "arriving alien" or an applicant for admission "seeking admission" may only be released from detention on parole (which is a form of release on recognizance), under 8 U.S.C. § 1182(d)(5). *Jennings*, 583 U.S. at 288. There is no bond available to an arriving alien or applicant for admission seeking admission. *Id.* There is no such thing as a "parole bond" – a release must be either parole under § 1182(d)(5) or a bond (conditional parole) under § 1226(a). *Id.*

70. For a noncitizen subject to discretionary detention under 8 U.S.C. § 1226(a), ICE makes an initial custody determination to either set

a bond or hold the individual at no bond. The noncitizen may then seek a review of ICE's initial custody determination before the IJ (a "custody review hearing"), who has the authority to modify ICE's custody determination and set bond in a case in which ICE has designated no bond, lower bond when ICE has set a cash bond amount or deny bond completely. 8 C.F.R. §§ 1003.19, 1236.1(d).

71. Custody review hearings and bond determinations are distinct from the hearings on the merits of the removal case, as outlined in 8 C.F.R. § 1003.19(d). Even if a noncitizen is granted bond by the IJ, they are still required to appear in immigration court for the IJ to assess their removability and consider any claims for relief from removal. During a custody review hearing, once the IJ establishes jurisdiction over the bond, the focus is solely on determining whether the detainee poses a danger to the community or is a flight risk. The regulation ensures that the focus of custody and bond hearings is on the immediate question of detention, rather than the broader issues of removability or eligibility for relief. Bond can only be granted if the IJ concludes that the detainee has met their burden of proving they are neither a danger nor a flight risk, as established in *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).

72. 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, 3009–582 to 3009–583, 3009–585. Section 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

73. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 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).

74. Thus, in the decades that followed, most people who entered without inspection and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed "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 that § 1226(a) simply "restates" the detention

authority previously found at § 1252(a)).

75. For decades, Respondents have consistently provided discretionary bond hearings and custody review hearings under § 1226(a) to individuals encountered within the interior of the United States, meaning those who are neither at a point of entry nor actively seeking admission. There are far too many authorities to name in support, some will be named in the following sections as controlling authority to rebut the government's application of § 1225, but for example see the following: *Rosado v. Figueroa*, No. CV-25-02157 PHX DLR (CDB), 2025 WL 2337099, at *10 (D. Ariz. Aug. 11, 2025), report and recommendation adopted sub nom. *Rocha Rosado v. Figueroa*, No. CV-25-02157 PHX DLR (CDB), 2025 WL 2349133, at *10 (D. Ariz. Aug. 13, 2025) ("Respondents' proposed application of § 1226 is also belied by the Department of Homeland Security's 'longstanding practice' of treating noncitizens taken into custody while living in the United States, including those detained and found inadmissible upon inspection and then released into the United States with the government's acquiescence, who have committed no crime after release, as detained under § 1226(a)," citing *Loper Bright Enter. V. Raimondo*, 603 U.S. 369, 386 (2024).

76. The Supreme Court has only recognized two legitimate objectives of immigration detention: **preventing danger to the community or preventing flight prior to removal**. *See Jennings*, 583 U.S. 281 at 300–01; *Demore v. Kim*, 538 U.S. 510, 523 (2003).

77. Due to due process concerns regarding the deprivation of liberty in civil contexts, most circuit courts addressing immigration detention issues for individuals not subject to a final order of removal have determined that the government bears the burden of proving that such individuals are a flight risk or a danger. The Ninth Circuit has ruled that noncitizens detained under § 1226(a) are "entitled to release on bond unless the government establishes that they are a flight risk or will be a danger to the community," as seen in *Diaz v. Garland*, 53 F.4th 1189, 1196 (9th Cir. 2022), where the court emphasized that they have a right to contest their custody before an IJ, **at which time the government bears the burden to prove that detention is justified**. The Second Circuit in *Velasco Lopez v. Decker*, 978 F.3d 842, 853–56 (2d Cir. 2020), also held that the government must prove a noncitizen is a danger to the community or a flight risk to deny bond. Furthermore, the First Circuit in *Hernandez-Lara v. Lyons*, 10

F.4th 19 (1st Cir. 2021), stated that a noncitizen must be released if the government cannot meet its burden of proving they are a danger or flight risk.

D. New ICE Memo Reinterpreting 8 U.S.C. § 1225(b)(2)

78. On July 8, 2025, ICE issued new interim guidance that significantly broadens the interpretation of 8 U.S.C. § 1225(b)(2). This guidance, detailed in the ICE memorandum titled "Interim Guidance Regarding Detention Authority for Applications for Admission," (*See* Exhibit 2), addresses the detention of "applicants for admission" as defined by § 1225(a)(1). The Department of Homeland Security (DHS) has declared that, "Effective immediately, it is the position of DHS that such aliens are subject to [mandatory] detention under INA § 235(b) [8 U.S.C. § 1225(b)(2)] and may not be released from ICE custody except by INA § 212(d)(5) [8 U.S.C. § 1182(d)(5)]." *Id.* This policy represents a significant departure from previous interpretations and practices concerning the treatment of noncitizens, aligning them with the historical treatment of "arriving aliens." Importantly, this memorandum was not made public or subjected to the notice and comment process required by the APA, but was instead issued by stealth without public disclosure. The exhibit was obtained

through the American Immigration Lawyers Association website.

79. In addition to the announcement re-interpreting § 1225(b)(2), the memo further clarifies that "[t]he only aliens eligible for a custody determination and release on recognizance, bond or other conditions under INA § 236(a) [8 U.S.C. § 1226(a)] during removal proceedings are aliens admitted to the United States and chargeable with deportability under INA § 237 [8 U.S.C.§ 1227], with the exception of those subject to mandatory detention under INA § 236(c) [8 U.S.C. § 1226(c)]." *Id.*

80. Moreover, ICE maintains that "DHS does not take the position that prior releases of applicants for admission pursuant to INA § 236(a) were releases on parole under INA § 212(d)(5) based on this change in legal position." *Id.* ICE fails to clarify under what legal authority, then, those prior releases were effectuated. Rather, ICE signals the resulting lack of "correct" paperwork is nonetheless permissible. *Id.* ("Accordingly, ERO and HSI are not required to 'correct' the release paperwork by issuing INA § 212(d)(5) parole paperwork.")

E. Recent BIA Decision *Matter of Yajure Hurtado*

81. On September 5, 2025, the BIA, which oversees all appeals of IJ decisions including custody redeterminations, upheld ICE's re-

interpretation of §1225(b)(2). *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). The BIA held that the respondent, who entered without inspection years previously, was an "applicant for admission" within the scope of § 1225(b), and therefore subject to mandatory detention.

82. The BIA characterized the issue before it as "one of statutory construction: Does the INA require that ***all*** applicants for admission, even those like the respondent who have entered without admission or inspection and have been residing in the United States for years without lawful status, be subject to mandatory detention for the duration of their immigration proceedings, and thus the Immigration Judge lacks authority over a bond request filed by an alien in this category?" [emphasis added]. ***Id***. at 220.

83. The BIA reasoned that individuals "who surreptitiously cross into the United States remain applicants for admission until and unless they are lawfully inspected and admitted by an immigration officer." *Id*. at 228.

84. The BIA acknowledged the decades of precedent preceding its decision that authorized release of individuals present without having been inspected and admitted or paroled under § 1226(a).

Id. at 225, FN6 ("We acknowledge that for years Immigration Judges have conducted bond hearings for aliens who entered the United States without inspection. However, we do not recall either DHS or its predecessor, the Immigration and Naturalization Service, previously raising the current issue that is before us. In fact, the supplemental information for the 1997 Interim Rule titled '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), reflects that the Immigration and Naturalization Service took the position at that time that '[d]espite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination.'")

85. Ultimately, the BIA upheld the decision that the IJ lacked jurisdiction under 8 U.S.C. § 1225(b)(2) to consider the respondent for discretionary bond. *Id.* at 229. ***Yajure Hurtado*** **holds that there is no jurisdiction for the immigration judges to even have a hearing whether the person is eligible for a bond or not. The BIA decision is binding on all immigration judges nationwide.**

86. Respondents' new policy and interpretation of 8 U.S.C. § 1225(b)(2) stand to sweep millions of noncitizens into mandatory detention, without any consideration for release on bond (regardless of their ties to their community or lack of dangerousness or flight risk). *Rosado*, 2025 WL 2337099, at *11 ("It has been estimated that this novel interpretation would require the detention of millions of immigrants currently residing in the United States.")

87. Many noncitizens in Petitioners' situation who are non-criminals are now being detained for months (and possibly years) without the opportunity to be released on recognizance or bonds.[4]

88. Harsh detention conditions for weeks and possibly months with hardened criminals, with the current immigration system case backlog (estimated at a few million cases) that could take years to resolve, results in mental health issues suffered by detained noncitizens like Petitioners. Unfortunately, they are becoming more common as non-criminals like him are put in prolonged detention by ICE.[5]

89. With immigration cases backlogs reaching almost 3.5 million, and many cases taking months or years to resolve, Petitioners'

[4] See New York Times article "Under Trump Policy, Bonds for Immigrants Facing Deportation Are Vanishing".
[5] New York Times article "People Are Losing Hope Inside ICE Detention Centers".

detention is unreasonable and unconstitutional.[6] Even assuming Respondents could conduct a quick removal hearing and get an order of removal against Petitioners in the next several months, if Petitioners exercises the appellate rights to the BIA, their backlog is estimated in over 5 years as they have a considerable amount of cases and only 28 BIA members.

F. Recent Federal Court Cases Rejecting DHS' and EOIR's New Interpretation

90. Since Respondents adopted their new policies, dozens of federal courts have rejected their new interpretation of the INA's detention authorities. Courts have likewise rejected *Matter of Yajure Hurtado*, which adopts the same reading of the statute as ICE. Exhibit 1.

91. Subsequently, noncitizens who entered without inspection had only one choice to secure their release: by filing habeas petitions. Court after court all over the country that has dealt with this issue rejected ICE and EOIR's new interpretation and has adopted the same reading of the INA's detention authorities for individuals

[6] See https://tracreports.org/phptools/immigration/backlog/

who entered without inspection as authorized by 8 U.S.C. § 1226(a), not under § 1225(b)(2).

92. Similar court cases known to undersigned counsel that have dealt with the same issue are as follows. Although this is certainly not an exhaustive list, just illustrative of the overwhelming authority around the country that Petitioners' detention under § 1225(b)(2) is unjustified and unlawful.[7]

---

[7] *Savane v. Francis*, 2025 WL 2774452 (S.D.N.Y. Sept. 28, 2025) (Petitioner arrested pursuant to 1225 which was improper; habeas petition granted and immediate release ordered within one business day); *Artiga v. Genalo*, 2025 WL 2829434 (E.D.N.Y. Oct. 5, 2025) (**Petitioner unlawfully detained pursuant to 1225, government ordered to transport Petitioner back to EDNY within 24 hours and immediately upon effectuating his transfer, to release him from custody**); *Cuevas Guzman v. Andrews*, 2025 WL 2617256 (E.D. Cal. Sept. 9, 2025), (petitioner entered without inspection more than 30 years ago, detained pursuant to 1225, **court found 1226(a) applied based on statutory language; PI granted and court ordered release**); *Echevarria v. Bondi*, 2025 WL 2821282 (D. Ariz. Oct. 3, 2025), entered without inspection in 2001, arrested in 2025 under 1225(b); **the 24 year period petitioner resided in the U.S. made the plain language of 1225(b) was inapplicable to him, at the time of arrest an immigration officer was not "examining" him and he was not "seeking" admission; Based on *Jennings* and *Nielsen*, statutory scheme of 1226(a) applies**); *Maldonado Vazquez v. Feeley*, 2025 WL 2676082 (D. Nev. Sept. 17, 2025) (entered without inspection over 20 years ago; detained July 2025; **court help petitioner held pursuant to 1226(a) not as the government contends 1225(b)(2); Yajure Hurtado renders requiring prudential exhaustion futile;** PI granted and release ordered on IJ bond); *Rodriguez Vazquez v. Bostock*, 2025 WL 2782499 (W.D. Wash Sept. 30, 2025) (**court granted summary judgement** on behalf of a class of people without lawful status held in Tacoma who entered without inspection and not apprehended upon arrival, court held plain text of **1226(a) applies rather than 1225(b) and issues a detailed statutory analysis**); *Guzman Alfaro v. Wamsley*, *2025 WL 2822113* (W.D. Wash. Oct. 2, 2025) (court granted similar relief as a class member of *Rodriguez Vasquez; Garcia Cortes v. Noem*, 2025 WL 2652880 (D. Colo. Sept. 16, 2025) (**Court held 1226(a) and not 1225(b)(2) authorizes detention; procedural due process violated under Mathews, habeas granted**); *Lopez-Campos v. Raycroft*, No. 2:25-cv-12486, 2025 WL 2496379, at *5-6 (E.D. Mich. Aug. 29, 2025) (granting petition for writ of habeas corpus ordering immediate release or bond hearing, where, for 30 years, **courts have applied section 1226(a) to noncitizens like the petitioner who was already in the United States but facing removal, rejecting the government's argument that section 1225 applied so no bond hearing was required**; *Mena Torres v. Wamsley*, 2025 WL 2855739 (W.D. Wash. Oct. 8, 2025) (Petitioner arrived without inspection in 2016, DEA encountered him in an unrelated search warrant and detained him under 1225(b)(2), court found that detention governed

93. *See* Exhibit 1 attachment containing over 240(!) recent district court cases from around the country and authorities continue to reaffirm that noncitizens apprehended in the interior are subject to discretionary detention under 8 U.S.C. § 1226(a), not mandatory detention under § 1225(b)(2) and that Respondents' interpretation is unlawful.

94. As the *Lopez Benitez* Court poignantly articulated: "This understanding accords with the plain, ordinary meaning of the words "seeking" and "admission." For example, someone who enters a movie theater without purchasing a ticket and then

---

by 1226(a); *Jimenez v. FCI Berlin*, Warden, 2025 WL 2639390 (D.N.H. Sept. 8, 2025) (detained under § 1226, and continued detention without a bond hearing before an IJ is unlawful); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025) (granting a TRO for a native Ukraine citizen, who entered the U.S. without being inspected by an immigration officer and applied for asylum, because her due process rights were violated without a bond hearing pursuant to section 1225(a)); *Pizarro Reyes v. Raycraft*, No. 25-cv-12546, 2025 WL 2609425, at *4-5 (E.D. Mich. Sept. 9, 2025) (granting petition for writ of habeas corpus for petitioner for government's failure to conduct a bond hearing pursuant to section 1226(a), rejecting the government's argument that section 1225 applied because petitioner did not enter lawfully so was still "seeking admission", where the petitioner had been living in the United States since 2005 and the amendment to section 1226 via the Laken Riley Act would have been redundant were section 1225 to apply); *Guerrero Lepe v. Andrews*, No. 1:25-cv-01163-KES-SKO (HC), 2025 WL 2716910, at *4 n.5, *8 (E.D. Cal. Sept. 23, 2025) (holding that petitioner was likely to succeed under the merits that he was not subject to section 1225 and was wrongfully denied a bond hearing pursuant to section 1226(a), stating "[t]he Court is not bound by Matter of Yajure Hurtado's interpretation of sections 1225 and 1226[,]" and may look to the "longstanding practice of government" and "the BIA's interpretations of the INA for guidance, but [it] must not defer to the agency.") (citations omitted); *Hernandez Marcelo v. Trump*, No. 3:25-cv-00094-RGE-WPK, 2025 WL 2741230, at *7-8 (S.D. Iowa Sept. 10, 2025) (refusing to apply BIA's *Yajure Hurtado* decision finding that all applicants for admission are necessarily "seeking admission" for purposes of warranting application of section 1225, because "the legislative history and congressional intent of the Immigration and Nationality Act do not support mandatory detention for all noncitizens present in the United States" as further supported by the "weight of caselaw").

proceeds to sit through the first few minutes of a film would not ordinarily then be described as "seeking admission" to the theater. Rather, that person would be described as already present there. Even if that person, after being detected, offered to pay for a ticket, one would not ordinarily describe them as "seeking admission" (or "seeking" "lawful entry") at that point—one would say that they had entered unlawfully but now seek a lawful means of remaining there. As § 1225(b)(2)(A) applies only to those noncitizens who are actively "seeking admission" to the United States, it cannot, according to its ordinary meaning, apply to Mr. Lopez Benitez, because he has already been residing in the United States for several years." *Lopez Benitez v. Francis*, —— F.Supp.3d at ——, 2025 WL 2371588, at *7.

95. "Moreover, Respondents' novel position would expand § 1225(b) far beyond how it has been enforced historically, potentially subjecting millions more undocumented immigrants to mandatory detention, while simultaneously narrowing § 1226(a) such that it would have extremely limited (if any) application. If, as Respondents contend, anyone who has entered the country unlawfully, regardless of how long they have resided here, is subject to mandatory detention under § 1225(b)(2)(A), see Conf. Tr. 19:9-20:4, then it is not clear

under what circumstances § 1226(a)'s authorization of detention on a discretionary basis would ever apply. Perhaps it might still apply to a subset of noncitizens who are lawfully admitted (e.g., on a visa of some sort), and who then remain present unlawfully. But there is no indication that Congress intended § 1226 to be limited only to visa overstays. And there is nothing in the history or application of § 1226 to even remotely suggest that it was intended to have such a narrow reach." *Id.* at *8.

96. Given that immigration judges are now bound by the *Yajure Hurtado* decision, which deprives them of jurisdiction to grant bond to individuals classified as "arriving aliens," it would be futile for Petitioners to seek an immigration bond hearing at this stage. Any such application would certainly be denied for lack of jurisdiction, resulting only in further unnecessary detention and additional legal expenses, without any prospect of meaningful relief. Under these circumstances, requiring Petitioners to pursue a bond hearing before an immigration judge would serve no practical purpose and would merely prolong his unlawful detention, contrary to the interests of justice and judicial economy.

97. Courts all over the country have consistently rejected the new interpretation by DHS and EOIR, as it contradicts the INA. These

courts have clarified that the plain language of the statutory provisions indicates that § 1226(a), rather than § 1225(b), governs the detention of individuals like the Petitioners who entered without inspection. The challenge lies in the fact that habeas relief is granted on an individual basis, not on a class-wide scale, necessitating that courts tailor their findings to the specific circumstances of each person applying for a writ of habeas corpus.

XI. STATUTORY FRAMEWORK OF THE INA

Section 1225 Is Titled "Inspection"

98. Section 1225 is titled "Inspection of applicants for admission" and is designed to govern the process of inspecting individuals at the border or port of entry. It is not intended to apply to noncitizens who entered unlawfully years ago and have since established residence in the interior. Congress provided a separate detention regime under § 1226(a) for noncitizens apprehended in the interior, which allows for individualized bond hearings and discretionary release. To collapse these regimes and subject all interior apprehensions to mandatory detention under § 1225(b) would render § 1226(a) superfluous and contradict decades of agency and judicial practice.

99. The Supreme Court has repeatedly recognized that the title of a statute and the heading of a section are "tools available for the resolution of a doubt about the meaning of a statute" and can provide important cues about congressional intent, especially where the operative text is ambiguous or subject to competing interpretations. See *Yates v. United States*, 574 U.S. 528, 539–40 (2015); *Almendarez-Torres v. United States*, 523 U.S. 224, 234 (1998); *Trainmen v. Baltimore & Ohio R. Co.*, 331 U.S. 519, 528–29 (1947). The heading of INA § 1225—"**Inspection of applicants for admission**"—signals that Congress intended this section to govern the process of inspecting individuals who are seeking entry into the United States **at a designated inspection point**, such as a border crossing or port of entry, not those who entered years ago and are apprehended in the interior. As the Supreme Court explained in *Yates*, statutory headings are not controlling, but they "supply cues" that Congress did not intend the operative provisions to sweep more broadly than their context suggests. If Congress had intended § 1225 to apply to all noncitizens present in the United States without admission, regardless of where or when they were apprehended, it would have chosen a more expansive heading and provided a clearer indication

of that intent in the statutory text. Instead, the heading confines the scope of § 1225 to the inspection process at the threshold of entry, supporting the longstanding interpretation that its mandatory detention provisions are relevant only for aliens caught at an inspection point, not for long-term residents apprehended in the interior.

8 U.S.C. § 1101's Definition of "Admission"

100. The term "admission" is defined as "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).

101. "Entry" has long been understood to mean "a crossing into the territorial limits of the United States." *Matter of Ching and Chen*, 19 I&N Dec. 203, 205 (BIA 1984) (citing *Matter of Pierre*, 14 I & N Dec. 467, 468 (BIA 1973)).

102. The phrase "seeking admission," accordingly, means that a noncitizen must be actively "seeking" "lawful entry." See *Lopez Benitez*, 2025 WL 2371588, at *7.

> "'[S]eeking admission' implies action–something that is **currently occurring**, and in this instance, would most logically occur at the border upon inspection." (emphasis added)

Lopez-Campos v. Raycraft, No. 2:25-CV-12486, 2025 WL 2496379, at *6 (E.D. Mich. Aug. 29, 2025).

As the Court held in another case in which undersigned counsel represented a similarly situated client:

> "Here, Mr. Alejandro is not actively "seeking" "lawful entry" because he entered the United States over 20 years ago... Respondents also argue, however, that he is now seeking admission "because he has not agreed to depart, [and] he has not yet conceded his removability or allowed his removal proceedings to play out." Dkt. 11 at 16. But Respondents do not explain how Mr. Alejandro's inaction—not agreeing to depart; not conceding removability— shows that he is "seeking admission."

Jose Alejandro v. Olson, No. 1:25-cv-02027-JPH-MKK, 2025 WL 2896348 (S.D. Ind., October 11, 2025).

103. Petitioners is not "seeking an admission" or "seeking lawful entry" because he cannot. The INA bars him from seeking lawful entry because he entered illegally and accrued unlawful presence of over one year. Therefore, he is ineligible to adjust his status in the U.S. or obtain a visa to enter. If he leaves the U.S. he will be subject to a 10-year reentry bar. 8 U.S.C. § 1182(a)(9)(B)(i)(II).

104. Petitioners intends to seek relief from removal called "Cancellation of removal for non-permanent residents." 8 U.S.C. § 1229b(b). An applicant for cancellation of removal cannot be

considered as "seeking an admission" or "seeking lawful entry" because the legal framework and purpose of cancellation of removal are distinct from those of admission or entry into the United States. Cancellation of removal is a form of relief from removal available to certain noncitizens who are already present in the United States and are facing removal proceedings. It is not a mechanism for entering the country or adjusting one's status to that of a lawful entrant.

8 U.S.C. § 1101's Definition of "Application for Admission"

105. The statutory definition in 8 U.S.C. § 1101(a)(4) makes clear that the term "application for admission" refers **specifically to the act of seeking entry into the United States at a physical border or port of entry, and not to the process of applying for an immigrant or nonimmigrant visa abroad**. The statute provides: "The term 'application for admission' has reference to the application for admission into the United States and not to the application for the issuance of an immigrant or nonimmigrant visa." This language underscores that Congress intended "applicant for admission" to mean individuals who are at the

threshold of entry, **actively seeking to be inspected and admitted by immigration authorities**. It does not encompass those who entered the country unlawfully years ago and have since established residence in the interior. To interpret § 1225 as applying to long-term residents apprehended far from any inspection point would disregard the plain meaning of "application for admission" as defined by Congress, collapse the statutory distinction between border and interior cases, and extend mandatory detention far beyond its intended scope (almost any noncitizen would be subject to mandatory detention other than a small percentage of people who entered on visas and overstayed). The statutory text thus supports the longstanding practice that only those physically present at or near the border, or otherwise in the process of seeking entry, are "applicants for admission" under § 1225—not individuals who entered without inspection long ago and are now subject to removal proceedings in the interior

106. The term "arriving alien" is defined by Respondents' own regulation as "an applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry, or an alien interdicted in international or United States waters and brought

into the United States by any means, whether or not to a designated port-of-entry, and regardless of the means of transport" (8 C.F.R. § 1.2). The use of the present participle "arriving" and the phrase "coming or attempting to come" make clear that the statutory and regulatory focus is on the alien's status **at the time of entry or attempted entry**—not on individuals who have already entered and established residence in the United States.

107. The statute repeatedly uses the present tense—"arriving," "seeking admission"—to describe the class of individuals subject to its provisions. This is consistent with the longstanding principle that the "entry fiction" applies only at the border or port of entry, and that once an individual has entered the United States and established presence, they are no longer "arriving" or "seeking admission" in the present sense.

108. The recent attempt to reclassify long-term residents as "arriving aliens" ignores the plain, present-progressive meaning of the term and the statutory context in which it appears. In sum, "arriving alien" is a present-progressive term that applies to those who are in the process of seeking admission at the border or port of entry, not to individuals who entered the United States years ago and have since established residence in the interior. To interpret it

otherwise would distort both the ordinary meaning of the language and the statutory structure Congress enacted.

"Application for Admission" Is a Discrete, Temporal Event—Not a Continuous Status

109. The Ninth Circuit had a case on point which supports Petitioners' case. The Ninth Circuit in *Torres v. Barr*, 976 F.3d 918 (9th Cir. 2020), held unequivocally that the phrase "application for admission" **refers to a discrete event: an actual attempt to physically enter the United States, not a continuous or indefinite status that persists after entry**. The court explained that **"application for admission" is not a status that attaches to a person indefinitely, but rather describes a specific moment in time when an individual presents themselves at a border or port of entry and seeks to be admitted. The phrase "at the time of application for admission" imposes a temporal requirement, referring to a single point in time, not a continuous period** (*Torres*, 976 F.3d at 926).

110. Torres further clarified that while 8 U.S.C. § 1225(a)(1) may "deem" certain noncitizens present in the United States without admission as "applicants for admission" **for procedural purposes**, this legal fiction does not transform their status for substantive grounds of

inadmissibility or mandatory detention. **The court distinguished between being "deemed" an applicant for admission for the purpose of placing someone in removal proceedings, and actually being an applicant for admission for the purposes of applying the substantive grounds of inadmissibility and mandatory detention under § 1225(b)** (Torres, 976 F.3d at 928).

111. The Fifth Circuit in *Marques v. Lynch*, 834 F.3d 549 (5th Cir. 2016), reached a similar conclusion, holding that provisions like 8 U.S.C. § 1182(a)(7) apply only to applicants for admission who are seeking to enter the country, not to those already present in the United States seeking post-entry adjustment of status. The court reasoned that the statutory scheme distinguishes between those at the border seeking entry and those who have already entered, and that the grounds of inadmissibility and related detention provisions are not meant to apply retroactively to long-term residents apprehended in the interior (*Marques*, 834 F.3d at 553–54; cited in Torres, 976 F.3d at 927). Petitioners, who has lived in the United States for a substantial period and was apprehended far from any border or inspection point, cannot be considered an "applicant for admission" in the substantive sense required by § 1225(b). The government's reliance on the "deemed" language of § 1225(a)(1)

ignores the temporal and contextual limitations recognized by the Ninth and Fifth Circuits. Petitioners' detention must be governed by § 1226(a), which provides for discretionary bond hearings, not by the mandatory detention provisions of § 1225(b).

8 U.S.C. § 1225(b)(2)(A)

112. It is clear from the plain language of 8 U.S.C. § 1225(b)(2)(A) that it applies to people in the process of entering the country:

> "Subject to subparagraphs (B) and (C), in the case of an alien who is an applicant for admission, **if the examining immigration officer determines than 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."

At no point in time, other than at the border, airport or other port of entry into the country are there immigration officers examining admissions.

STATUTORY STRUCTURE OF § 1226

113. Section 1226 is titled "**Apprehension and detention of aliens**." (plain language argument). Congress's intent in enacting 8 U.S.C. § 1226(a) was to provide for discretionary detention of noncitizens during removal proceedings, not to impose mandatory detention on all such individuals. Section 1226(a) expressly authorizes the

Attorney General to detain or release an arrested noncitizen on bond or conditional parole, reflecting a deliberate legislative choice to allow individualized custody determinations based on flight risk or danger to the community. Therefore, **for noncitizens subject to § 1226(a), the presumption is that they should not be detained.**

114. In sharp contrast, § 1226(c) mandates **mandatory detention only for a narrowly defined subset of noncitizens—those with certain criminal convictions or security concerns**—demonstrating that Congress knew how to require mandatory detention when it so intended. If Congress had wanted all noncitizens subject to § 1226(a) (including those who entered without inspection) to be mandatorily detained, it would have written § 1226(a) in the same unequivocal terms as § 1226(c). The existence of § 1226(a)'s discretionary framework, and the careful limitation of mandatory detention to specific categories in § 1226(c), make clear that Congress did not intend for all noncitizens apprehended in the interior, including EWIs, to be subject to mandatory detention by default. To read § 1226(a) otherwise would render its discretionary provisions—and the entire structure of individualized bond hearings—superfluous, contrary to basic

principles of statutory interpretation and the longstanding practice recognized by courts and agencies alike.

115. It is therefore both logical and constitutionally sound for the government to bear the burden of proof in demonstrating that a noncitizen detained under 8 U.S.C. § 1226(a) is a flight risk or danger to the community. Section 1226(a) establishes a discretionary detention framework, expressly authorizing release on bond or conditional parole unless the government can show that continued detention is necessary. This structure reflects Congress's intent to protect the fundamental liberty interests at stake in civil immigration detention, which, unlike criminal incarceration, is not punitive and must be justified by legitimate government interests. Placing the burden on the government ensures that detention is not the default (as it has become with this Administration), but rather an **exception** justified by specific, individualized findings. This allocation of burden is consistent with due process principles, which require the government to justify any deprivation of liberty, and aligns with longstanding practice in both immigration and other civil detention contexts. If the government could detain by default and require the noncitizen to prove a negative, the statutory promise of individualized review and the presumption of liberty

would be rendered meaningless. Thus, requiring the government to prove flight risk or dangerousness under § 1226(a) is essential to safeguard due process and effectuate the statute's purpose of individualized, non-punitive detention determinations.

116. The 11th Circuit has not yet addressed this question specifically in relation to noncitizens detained pursuant to § 1226(a), however, the circuits who have addressed it, all stated that the **government bears the burden to prove that detention is warranted, i.e., that the noncitizen is either a danger to the community or a flight risk**. No circuit court known to undersigned counsel put the burden on the noncitizen to prove that he or she is not a flight risk or a danger. The Ninth Circuit has ruled that noncitizens detained under § 1226(a) are "entitled to release on bond unless the government establishes that they are a flight risk or will be a danger to the community," as seen in *Diaz v. Garland*, 53 F.4th 1189, 1196 (9th Cir. 2022), where the court emphasized that they have a right to contest their custody before an immigration judge, at which time the government bears the burden to prove that detention is justified (both require clear and convincing evidence). The Second Circuit in *Velasco Lopez v. Decker*, 978 F.3d 842, 853–56 (2d Cir. 2020), also held that the government must prove a

noncitizen is a danger to the community or a flight risk to deny bond under § 1226(a) (both require clear and convincing evidence). Furthermore, the First Circuit in *Hernandez-Lara v. Lyons*, 10 F.4th 19 (1st Cir. 2021), stated that a noncitizen must be released under § 1226(a) if the government cannot meet its burden of proving they are a danger or flight risk (the only difference is the standard: clear and convincing evidence for dangerousness or preponderance of the evidence for flight risk determinations). In any event, the government has not claimed that Petitioners is a danger nor a flight risk, let alone proved it. Their only contention is that Petitioners is subject to mandatory detention because he is an "arriving alien" or "applicant for admission."

Structure and Amendments of 8 U.S.C. § 1226(c) and the Laken Riley Act Affirm Petitioners' Position

117. There is no delineation in the INA between noncitizens who arrived on a visa or noncitizens without inspection (EWI) in terms of eligibility for release. They are treated the same in § 1226. If, as Respondents argue, every noncitizen who EWI'd is always an "applicant for admission" subject to mandatory detention under § 1225(b), then the entire structure of § 1226(a) and (c) would be rendered largely superfluous for a vast class of noncitizens—those

who entered without inspection but have been living in the interior for years. This is not how Congress has historically structured the INA, nor is it consistent with decades of agency and judicial practice.

8 U.S.C. § 1226(c): Targeted Mandatory Detention for Criminals

118. Section 1226(c) specifically mandates detention for noncitizens who are removable or inadmissible on certain criminal or national security grounds. The statute is detailed and precise, listing the categories of offenses and the circumstances under which mandatory detention applies. Congress's decision to enumerate these categories and to require mandatory detention only for this subset of noncitizens demonstrates a deliberate legislative choice: **If all EWIs were already subject to mandatory detention under § 1225(b), there would be no need for § 1226(c) to exist as a separate, carefully crafted provision**. The existence of § 1226(c) presupposes that there are noncitizens in removal proceedings who are not subject to mandatory detention—i.e., those who are not "arriving aliens" or "applicants for admission" under § 1225(b), but who are EWIs may be subject to mandatory detention if they fall within the criminal or security categories of § 1226(c).

Laken Riley Amendments Expanded Not Duplicated Detention

119. The Laken Riley Act, enacted in 2025, amended § 1226(c) to further expand the categories of noncitizens subject to mandatory detention, including certain additional criminal offenses and public safety risks. The legislative history and statutory text make clear that Congress intended to **expand** the reach of mandatory detention for specific, **high-priority categories**—not to restate or duplicate a rule that, under Respondents' theory, would already apply to all EWIs.

120. **If Respondents' interpretation were correct, the Laken Riley Act's amendments to § 1226(c) would be unnecessary and redundant**. Congress would not have needed to specify new categories of mandatory detention if all EWIs were already mandatorily detained under § 1225(b). The careful drafting and expansion of § 1226(c) by Congress, including the Laken Riley Act amendments, only make sense if there is a significant population of noncitizens in removal proceedings who are not otherwise subject to mandatory detention—i.e., those detained under § 1226(a), including many EWIs apprehended in the interior.

Avoiding Surplusage and Giving Effect to All Provisions

121. The Supreme Court has repeatedly held that statutes must be interpreted to give effect to all provisions and to avoid rendering any part superfluous or redundant. See *Duncan v. Walker*, 533 U.S. 167, 174 (2001) ("It is our duty to give effect, if possible, to every clause and word of a statute."). **If every EWI is always an "applicant for admission" subject to § 1225(b) mandatory detention, then the entire framework of § 1226(a) and (c) for noncitizens apprehended in the interior would be largely meaningless for a vast class of cases.**

122. The government's reading would collapse the careful distinctions Congress drew between different categories of noncitizens (such as criminal noncitizens subject to mandatory detention under § 1226(c)), their procedural rights, and the availability of bond or release.

8 U.S.C. § 1182(a)(6) and § 1182(a)(7) Would Be Rendered Superfluous

123. The statutory distinction between 8 U.S.C. § 1225 and § 1226 is also underscored by the separate grounds of inadmissibility set forth in 8 U.S.C. § 1182(a)(6) (entry without inspection) and §

1182(a)(7) (lack of valid documentation). If all noncitizens who entered without inspection ("EWIs") were truly "arriving aliens" subject to § 1225, there would be no need for the INA to maintain different inadmissibility charges for those seeking entry at a port of entry versus those apprehended in the interior. The existence of these distinct statutory grounds reflects Congress's intent to treat border cases and interior apprehensions differently in removal proceedings. For decades, the Board of Immigration Appeals (BIA) and agency practice recognized this distinction: noncitizens apprehended in the interior after years of residence—regardless of their manner of entry—were routinely charged under § 1182(a)(6)(A)(i) and afforded bond hearings under § 1226(a), with immigration judges empowered to grant release if the individual was not a danger or flight risk. This practice persisted until the abrupt policy shift in July–September 2025.

UNTENABLE CONSEQUENCES FROM RESPONDENTS' ACTIONS

Even if § 1225(b) were applicable, under the government's interpretation it would follow that all noncitizens would be detained for years without bond

124. Even if § 1225(b) were applicable, the government's interpretation that it mandates indefinite detention without any individualized

bond hearing raises serious constitutional due process concerns. The Supreme Court in Jennings addressed the statutory interpretation of § 1225(b) and § 1226(a), clarifying that § 1225(b) mandates detention for certain "applicants for admission." However, *Jennings* did not address the constitutional limits on such mandatory detention, particularly when it becomes prolonged.

125. The Supreme Court in *Denmore v. Kim* held that due process requires an individualized bond hearing for aliens detained for a prolonged period under § 1226(c). 538 U.S. 510 (2003). While it specifically addressed § 1226(c) which involves mandatory detention of criminal aliens (which is not alleged against Petitioners), its underlying principle—that prolonged detention without individualized review violates due process—is equally applicable to detention under § 1225(b). There are several district court decisions from around the country releasing noncitizens who have been detained under § 1225(b) for prolonged periods. The Fifth Amendment's Due Process Clause protects all persons within the United States, including noncitizens, from arbitrary governmental action. Prolonged detention, especially for an individual deemed neither a flight risk nor a danger, without a meaningful opportunity for release, constitutes such arbitrary action.

126. Even if the government's position were correct—that noncitizens who entered without inspection long ago are "arriving aliens"—the result would be that such individuals could be detained for years without any possibility of bond. Given the current immigration court backlog, which numbers in the millions of cases[8], it is simply not feasible for all such cases to be resolved quickly. Removal proceedings, followed by appeals to the Board of Immigration Appeals (BIA), and potentially Petitions for Review in the federal circuit courts, routinely take several years to reach finality, even for detained clients. This problem is only exacerbated by the recent reduction of approximately 20% of immigration judges nationwide[9] and the fact that there are only 28 BIA members to handle immigration appeals. Under the government's theory, countless long-term residents in the country would face mandatory, unreviewable detention for the entire duration of these protracted proceedings—an outcome that is both unworkable as a matter of statutory interpretation and constitutionally suspect given the fundamental liberty interests at stake. This is especially true as the

[8] https://tracreports.org/phptools/immigration/backlog/
[9] https://www.npr.org/2025/09/23/nx-s1-5550915/trump-immigration-judges

vast majority of these detained noncitizens are non-criminals[10] (over 71% based on tracreports.org).

XII. LEGAL FRAMEWORK FOR THE RELIEF SOUGHT

A. Habeas Jurisdiction

127. Habeas corpus relief extends to a person "in custody under or by color of the authority of the United States" if the person can show she is "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241 (c)(1), (c)(3); *I.N.S. v. St. Cyr*, 533 U.S. 289, 314 (2001). *See* also *Antonelli v. Warden, U.S.P. Atlanta*, 542 F.3d 1348, 1352 (11th Cir. 2008) (holding a Petitioners' claims are proper under 28 U.S.C. section 2241 if they concern the continuation or execution of confinement). The U.S. 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). This includes immigration-related detention. *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001) (addressing post final-removal order detention under § 1231). *Jennings v. Rodriguez*, 583

[10] Over 71% of current detainees have no criminal convictions and many others have minor convictions
https://tracreports.org/immigration/quickfacts/detention.html#detention_numatd

U.S. 281, 285–86 (2018) (addressing § 1226 detention, which is more applicable to this instant case as Petitioners does not have a final order of removal).

128. "[H]abeas corpus is, at its core, an equitable remedy," *Schlup v. Delo*, 513 U.S. 298, 319 (1995), that "[t]he court shall ... dispose of [] as law and justice require," 28 U.S.C. § 2243. "[T]he court's role was most extensive in cases of pretrial and noncriminal detention." *Boumediene v. Bush*, 553 U.S. 723, 779– 80 (2008) (citations omitted). "[W]hen the judicial power to issue habeas corpus properly is invoked the judicial officer must have adequate authority to make a determination in light of the relevant law and facts and to formulate and issue appropriate orders for relief, including, if necessary, an order directing the prisoner's release." Id. at 787. The Petitioners seeking habeas relief must demonstrate he is in custody in violation of the Constitution or federal law. 28 U.S.C. § 2241(c)(3); *Walker v. Johnston*, 312 U.S. 275, 286 (1941).

129. Even if Petitioners were to be released prior to this Court granting relief, "in custody" would still be satisfied because significant restraints short of jail, which include removal proceedings and the continuous threat of re-detention, satisfy § 2241. See *Hensley v. Municipal Court*, 411 U.S. 345, 351 (1973).

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

131. 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).

B. The Administrative Procedure Act (APA)

132. The APA authorizes judicial review of final agency action. 5 U.S.C. § 704. The APA sets minimum standards for final agency action.

133. Final agency actions are those (1) that "mark the consummation of the agency's decisionmaking process" and (2) "by which rights or obligations have been determined, or from which

legal consequences will flow." *Bennett v. Spear*, 520 U.S. 154, 178 (1997) (citation modified).

134. ICE's "Interim Guidance Regarding Detention Authority for Applications for Admission" constitutes a final agency action, making it subject to this Court's review in the Petitioners' case. Under this new interpretation, the agency asserts that the Petitioners are subject to mandatory detention without bond. This guidance represents the culmination of ICE's decision-making process concerning the Petitioners' custody and is an unlawful interpretation of the INA, contrary to its plain language.

135. Likewise, *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), is a final agency action subject to this Court's review in Petitioners' case.

136. Both the ICE memo referenced herein and *Matter of Yajure Hurtado* led ICE to detain Petitioners in violation of due process rights under the Constitution, statutes, and regulations.

C. The *Accardi* Doctrine Requires Agencies to Follow Internal Rules

137. Under the *Accardi* doctrine, a foundational principle of administrative law, agencies must follow their own procedures, rules, and instructions. *See United States ex rel. Accardi v.*

Shaughnessy, 347 U.S. 260, 268 (1954) (setting aside an order of deportation where the Board of Immigration Appeals failed to follow procedures governing deportation proceedings); see also *Morton v. Ruiz*, 415 U.S. 199, 235 (1974) ("Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures . . . even where the internal procedures are possibly more rigorous than otherwise would be required.").

138. *Accardi* is not "limited to rules attaining the status of formal regulations." *Montilla v. INS*, 926 F.2d 162, 167 (2d Cir. 1991). Courts must also reverse agency action for violation of unpublished rules and instructions to agency officials. See *Morton v. Ruiz*, 415 U.S. 199, 235 (affirming reversal of agency denial of public assistance made in violation of internal agency manual); *U.S. v. Heffner*, 420 F.2d 809, 812 (4th Cir. 1969) (under *Accardi*, reversing decision to admit evidence obtained by IRS agents for violating instructions on investigating tax fraud).

XIII. CAUSES OF ACTION AND CLAIMS FOR RELIEF

COUNT ONE

Declaratory Judgement

139. Petitioners reallege and incorporate by reference all paragraphs above as if fully set forth here.

140. Petitioners request a declaration from this Court that they are not an applicant for admission "seeking admission" or "an arriving alien" subject to mandatory detention under 8 U.S.C. §§ 1225(b)(1) or (b)(2). Petitioner further requests a declaration that Petitioners' current detention by Respondents, if justified at all, is governed solely by 8 U.S.C. § 1226(a).

COUNT TWO

Statutory Violation of the Immigration and Nationality Act: No-Bond Detention in Violation of 8 U.S.C. § 1226(a) and Unlawful Detention Under Improper Statutory Classification (INA §§ 1225 vs. 1226)

141. Petitioners reallege and incorporate by reference all paragraphs above as if fully set forth here.

142. Since Petitioners are not an applicant for admission "seeking admission" or an "arriving alien" subject to 8 U.S.C. §§ 1225(b)(1) or (b)(2) and has no disqualifying criminal arrests or convictions subject to 8 U.S.C. § 1226(c), Petitioners are entitled to a bond

redetermination hearing by an immigration judge pursuant to 8 U.S.C. § 1226(a).

143. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231 (which is not the case with Petitioner).

144. Respondents' actions, as detailed herein, infringe upon the Petitioners' statutory right to a bond redetermination hearing before an immigration judge. Additionally, the Respondents' application of § 1225(b)(2) to the Petitioner unlawfully enforces continued detention, contravening both the Immigration and Nationality Act (INA) and the Petitioners' constitutional rights, which will be further addressed below.

145. Petitioners' continued detention under § 1225(b)(2) is therefore unauthorized by statute, contrary to longstanding agency practice, and in violation of the INA and APA.

146. Even if Petitioners were to have a bond hearing before an immigration judge, the judge would likely deny bond based on the same unlawful and novel statutory interpretation outlined in the *Matter of Yajure Hurtado*, as previously discussed. Consequently, even if such a hearing were granted, Respondents would still infringe upon Petitioners' constitutional rights to a full and fair hearing (as immigration judges are no longer neutral arbitrators), thereby violating his lawful right to bond consideration.

COUNT THREE

Violation of the Bond Regulations

147. Petitioners reallege and incorporate by reference all paragraphs above as if fully set forth here.

148. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service (now DHS) issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of "Apprehension, Custody, and Detention of [Noncitizens]," the agencies explained that "[d]espite being applicants for admission, [noncitizens] **who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination**." 62 Fed. Reg. at

ignores the temporal and contextual limitations recognized by the Ninth and Fifth Circuits. Petitioners' detention must be governed by § 1226(a), which provides for discretionary bond hearings, not by the mandatory detention provisions of § 1225(b).

8 U.S.C. § 1225(b)(2)(A)

112. It is clear from the plain language of 8 U.S.C. § 1225(b)(2)(A) that it applies to people in the process of entering the country:

> "Subject to subparagraphs (B) and (C), in the case of an alien who is an applicant for admission, **if the examining immigration officer determines than 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."

At no point in time, other than at the border, airport or other port of entry into the country are there immigration officers examining admissions.

STATUTORY STRUCTURE OF § 1226

113. Section 1226 is titled "**Apprehension and detention of aliens**." (plain language argument). Congress's intent in enacting 8 U.S.C. § 1226(a) was to provide for discretionary detention of noncitizens during removal proceedings, not to impose mandatory detention on all such individuals. Section 1226(a) expressly authorizes the

without due process of law." U.S. CONT. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). This vital liberty interest is at stake when an individual is subject to detention by the federal government.

154. Under the civil-detention framework set out in *Zadvydas* and its progeny, the Government may deprive a non-citizen of physical liberty only when the confinement serves a legitimate purpose—such as ensuring appearance or protecting the community—and is reasonably related to, and not excessive in relation to, that purpose. Nonpunitive purpose such as preventing danger or flight and may not be excessive in relation to that purpose. See *Jennings*, 583 U.S. at 300–01; *Demore v. Kim*, 538 U.S. 510, 523 (2003).

155. Immigration detention is civil, not criminal, in nature, and therefore cannot be punitive. There are only two permissible reasons for immigration detention: to avoid flight risk, and to avoid danger to the community. Petitioners' detention therefore does not bear a reasonable relationship to the two regulatory purposes of immigration detention: preventing danger to the community or flight prior to removal.

156. After entering the United States unlawfully, Petitioner went on to develop ties to the community over the course of a long period of time. Petitioner is therefore a "person" within the meaning of the Due Process Clause of the Fifth Amendment to the U.S. Constitution and has a fundamental liberty interest in freedom from physical restraint.

157. Respondents' actions in detaining Petitioner without a bond hearing before a neutral and detached magistrate deprives Petitioner of various rights and liberty interest without due process of law.

158. Because Respondents had no legitimate, non-punitive objective in detaining Petitioner without bond, Petitioners' detention violates substantive due process under the Fifth Amendment to the U.S. Constitution. Continued confinement therefore bears no reasonable, non-punitive relationship to any legitimate aim and is unconstitutionally arbitrary under *Zadvydas*.

COUNT FIVE

Violation of the Fifth Amendment of the U.S. Constitution

***Summary of Claim of Petitioners' Fifth Claim for Relief*:** Petitioners reallege and incorporates by reference all paragraphs above as if fully set forth here.

159. The Fifth Amendment forbids deprivation of liberty without notice and a meaningful opportunity to be heard before a **neutral** decision-maker. The Supreme Court and several circuit courts of appeal have repeatedly affirmed that procedural due process applies to all persons within the United States, including noncitizens, and that civil detention must be accompanied by robust procedural safeguards.

160. In addition to being ultra vires, the novel interpretation of DHS and EOIR of Petitioners' detention under § 1225(b)(2) violates the due process rights of noncitizens like Petitioner by subjecting them to continued mandatory detention solely on the basis of these agencies' wrongful interpretations, without any individualized assessment of flight risk or danger. This automatic and prolonged detention deprives noncitizens of their liberty without adequate procedural safeguards, contravening the fundamental requirements of due process under the Fifth Amendment.

161. The Supreme Court has repeatedly recognized that civil detention must be accompanied by meaningful process and individualized findings; yet, Respondents are now permitted prolonged detention based on agency **interpretation** rather than judicial determination and legal basis. As a result, noncitizens are forced

to remain in custody for an extended period, suffering significant harm and disruption to their lives, without any statutory, regulatory or constitutional justification. This scheme is not only beyond the authority granted by Congress, but also fundamentally unfair and unconstitutional.

162. The Supreme Court states in *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976): "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). Noncitizens are entitled to due process protections in removal proceedings, including notice and a hearing. *Landon v. Plasencia*, 459 U.S. 21, 32 (1982). Due process applies to all persons within the United States, regardless of immigration status. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

163. 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). 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.

164. Applying the *Mathews v. Eldridge*, 424 U.S. 319 (1976), test to Petitioners' case:

a. Petitioners' liberty interest is paramount; the risk of erroneous deprivation is extreme considering that Petitioner is not subject to mandatory detention under 8 U.S.C. § 1226(c), is not a flight risk, and does not pose a danger to the community. Being free from physical detention by one's own government "is the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). The right to be free of detention of indefinite duration pending a bail determination, is "without question, a weighty one." *Landon v. Plasencia*, 459 U.S. at 34, 103 S.Ct. 321. Petitioner is being held at a county jail in the same conditions as criminal inmates, unable to work and is far from his family. At minimum, the government must come forward

redetermination hearing by an immigration judge pursuant to 8 U.S.C. § 1226(a).

143. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231 (which is not the case with Petitioner).

144. Respondents' actions, as detailed herein, infringe upon the Petitioners' statutory right to a bond redetermination hearing before an immigration judge. Additionally, the Respondents' application of § 1225(b)(2) to the Petitioner unlawfully enforces continued detention, contravening both the Immigration and Nationality Act (INA) and the Petitioners' constitutional rights, which will be further addressed below.

145. Petitioners' continued detention under § 1225(b)(2) is therefore unauthorized by statute, contrary to longstanding agency practice, and in violation of the INA and APA.

interpretation also conflicts with existing DHS and EOIR regulations that have historically distinguished between arriving aliens and those apprehended in the interior, providing the latter with the opportunity for bond hearings under 8 U.S.C. § 1226(a). When the government ignores law (and agency breaks its own regulations, policies and procedures), it is more likely to waste limited financial and administrative resources on unnecessary detention of people who are neither flight risks nor dangerous. This waste drags down the efficiency of the entire immigration system. And because the government must also spend resources defending against a habeas corpus petition in federal court to compel Respondents to comply with law, requiring Respondents to instead follow the law and their regulations reduces fiscal and administrative burdens on the government. Furthermore, the government's interest is further diminished by the potential constitutional violations that arise from denying noncitizens their due process rights, as the interpretation effectively eliminates the procedural safeguards intended to prevent erroneous deprivation of liberty.

In conclusion, all three *Mathews* factors favor Petitioners' position. The novel DHS and EOIR interpretations violate

Petitioners' procedural due process rights under the Fifth Amendment. Collateral harms from detention—including separation from Petitioners' family and friends and Petitioners' ability to maintain employment—further underscore the weight of the private interest and the risk of erroneous deprivation. These are collateral consequences of continued confinement that amplify the ongoing liberty deprivation, are not compensable by money damages, and therefore weigh heavily in the *Mathews* balance and the equitable analysis, without expanding the scope of relief requested.

COUNT SIX

Violation of Administrative Procedure Act, 5 U.S.C. § 706(2)(A), (B)

Contrary to Law and Constitutional Rights

165. Petitioners reallege and incorporates by reference all paragraphs above as if fully set forth here.

166. Under the APA, a court shall "hold unlawful and set aside agency action . . . found to be . . . not in accordance with law" or "contrary to constitutional right, power, privilege, or immunity." 5 U.S.C. § 706(2)(A), (B).

167. The APA's reference to "law" in the phrase "not in accordance with

law," "means, of course, any law, and not merely those laws that the agency itself is charged with administering." *FCC v. NextWave Pers. Commc'ns Inc.*, 537 U.S. 293, 300 (2003) (emphasis in original).

168. The July 2025 ICE memorandum and the EOIR's decision in *Yajure Hurtado* represent a significant and unauthorized expansion of § 1225(b)(2), categorizing individuals who entered the United States without inspection years ago as perpetual "applicants for admission." This expansion constitutes a violation of the APA. The ICE memorandum was issued in stealth, without public notice or opportunity for comment, in direct contravention of the APA's requirements for transparency and public participation in rulemaking.

169. Furthermore, while *Yajure Hurtado* was a published decision by the EOIR, it conflicts with the plain language of the INA and existing EOIR regulations. The decision appears to have been strategically published by the BIA to constrain immigration judges nationwide, effectively preventing them from granting bond to affected individuals, thereby undermining the procedural fairness guaranteed by the INA and the APA. Up until its publication, immigration judges were granting bonds to individuals who

entered without inspection. *See*, e.g., *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).

170. These actions were contrary to the agencies' constitutional power under the Fifth Amendment's Due Process Clause, as explained above. These recent changes were not in accordance with the plain language of the INA and implementing regulations governing who is an "applicant for admission" or an "arriving alien", as cited and discussed in the Statutory Framework section above.

171. DHS acted contrary to law. *See also Accardi* v. Shaughnessy, 347 U.S. 260, 268 (1954) (agency must follow its own regulations) (a separate claim to relief under *Accardi* is forthcoming below). These novel interpretations should be held unlawful and set aside because it was contrary to the agency's constitutional power and not in accordance with the INA and implementing regulations.

172. By issuing this ICE memo and publishing *Yajure Hurtado*, this regulation, the agencies have exceeded the authority delegated to them by Congress, effectively rewriting the statutory scheme to permit DHS to prolong detention without judicial determination or individualized findings for almost anyone present in the U.S. without an immigration judge review. This regulatory overreach undermines the statutory guarantee of prompt review and release

and is inconsistent with the principles of separation of powers and the nondelegation doctrine.

173. "Agency actions beyond delegated authority, are 'ultra vires,' and courts must invalidate them." *U.S. ex rel. O'Keefe v. McDonnell Douglas Corp.*, 132 F.3d 1252, 1257 (8th Cir. 1998); *see also Romero v. INS*, 39 F.3d 977, 980 (9th Cir. 1994) (holding that an immigration regulation that is inconsistent with the statutory scheme is invalid). Similarly, agency regulations that conflict with statutory text or structure must be invalidated.

174. Because these agencies' interpretations effectively transform a discretionary detention for people who are flight risks or a danger to mandatory detention to all without the possibility for release on bond, and as they directly contravene the plain language of the INA and its regulations, these decisions must be invalidated by this Court.

175. Petitioners' detention, premised solely on this ultra vires interpretation is "not in accordance with law," "in excess of statutory jurisdiction," and "arbitrary [and] capricious" under 5 U.S.C. § 706(2), entitling Petitioner to immediate release.

COUNT SEVEN

Violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A)

Arbitrary and Capricious

176. Petitioners reallege and incorporate by reference all paragraphs above as if fully set forth here.

177. Under the APA, a court shall "hold unlawful and set aside agency action . . . found to be arbitrary [or] capricious." 5 U.S.C. § 706(2)(A).

178. Respondents' revocation of Petitioners' order of supervision was arbitrary and capricious because it violated statute, regulation, and the Constitution, as described above.

179. An agency decision that "runs counter to the evidence before the agency" is also arbitrary and capricious. *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins.*, 463 U.S. 29, 43 (1983).

180. Petitioners' detention, beyond being unlawful and ultra vires, also "failed to consider important aspects of the problem". Petitioners' detention is arbitrary and capricious and in excess of statutory authority because DHS: (1) failed to consider Petitioners' reliance interests; (2) failed to consider less-restrictive alternatives to detention; (3) failed to explain a reasoned basis for departing from

its prior re determination; and (4) failed to comply with various regulations. *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 140 S. Ct. 1891, 1910 (2020) (reliance interests). *See also Motor Vehicle Mfrs. Ass'n v. State Farm*, 463 U.S. 29, 43 (1983) (requirement of reasoned decisionmaking).

181. For these and other reasons, Respondents' actions leading to Petitioners' detention and his continued detention was arbitrary and capricious and should be held unlawful and set aside.

COUNT EIGHT

Violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(C) In Excess of Statutory Authority

182. Petitioners reallege and incorporate by reference all paragraphs above as if fully set forth here.

183. Under the APA, a court shall "hold unlawful and set aside agency action . . . found to be . . . in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(C).

184. "An agency . . . literally has no power to act—including under its regulations—unless and until Congress authorizes it to do so by statute." *FEC v. Cruz*, 596 U.S. 289, 301 (2022) (internal quotation

marks and citation omitted).

185. Respondents' actions in publishing the ICE memo and *Yajure Hurtado* were in excess of statutory authority and should be held unlawful and set aside. Petitioners' mandatory detention pursuant to these actions violated the APA.

COUNT NINE

Ultra Vires Action

186. Petitioners reallege and incorporate by reference all paragraphs above as if fully set forth here.

187. There is no statute, constitutional provision, or other source of law that authorizes Respondents to detain Petitioners under these circumstances.

188. Petitioners have a non-statutory right of action to declare unlawful, set aside, and enjoin Respondents' ultra vires actions.

COUNT TEN

Violation of the *Accardi* Doctrine

189. Petitioners reallege and incorporate by reference all paragraphs above as if fully set forth here.

190. The *Accardi* doctrine mandates that federal agencies must adhere to their own established regulations and policies. This principle ensures that agency actions are consistent, fair, and predictable,

thereby safeguarding individual rights. Under the *Accardi* doctrine, Petitioner has a right to set aside agency action that violated agency procedures, rules, or instructions. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 ("If petitioner can prove the allegation [that agency failed to follow its rules in a hearing] he should receive a new hearing").

191. "[The ambit of the Accardi doctrine] is not limited to rules attaining the status of formal regulations." *Montilla v. Immigr. & Naturalization Serv.*, 926 F. 2d 162, 167 (2d Cir. 1991). Agency rules, whether codified or issued through internal guidance, are binding where they implicate important substantive and procedural rights. *See*, e.g., *Am. Farm Lines v. Black Ball Freight Serv.*, 397 U.S. 521, 538 (1970) (*Accardi* applies most forcefully where agency rules are "intended primarily to confer important procedural benefits upon individuals in the face of otherwise unfettered discretion"); *Damus v. Nielsen*, 313 F. Supp. 3d 317, 336 (D.D.C. 2018) (ICE bound by internal directive intended to protect noncitizens' procedural rights). Where these criteria are satisfied, the reviewing court must invalidate agency action or policy violating the agency's own rules.

192. The recent policy shifts by ICE and EOIR, as outlined in ICE's July

2025 memorandum and EOIR's *Yajure Hurtado* decision, violate the *Accardi* doctrine by failing to adhere to established agency regulations and procedures. The *Accardi* doctrine mandates that federal agencies must follow their own rules and regulations, particularly when these rules are designed to protect individual rights.

193. By reclassifying individuals who entered without inspection apprehended in the interior of the United States as "applicants for admission" or as "arriving aliens" subject to mandatory detention under § 1225(b)(2), ICE and EOIR have disregarded the procedural safeguards and discretionary bond provisions outlined in § 1226(a). ICE's and EOIR's reclassification policy effectively nullifies § 1226(a)'s statutory provision by subjecting all noncitizens to mandatory detention, regardless of their actual circumstances. This interpretation is contrary to the plain language of the INA and disrupts decades of settled law, which recognized the distinct legal status and rights of noncitizens apprehended in the interior. This departure from established regulations and legal standards not only contravenes the statutory framework of the INA but also undermines the procedural rights and protections intended to ensure fair and consistent treatment

of noncitizens, warranting immediate judicial intervention.

194. The issuance of the ICE memorandum without public notice or comment further exemplifies a breach of procedural norms, as it was implemented in a manner that bypassed the transparency and accountability required by the APA. Consequently, these actions represent an arbitrary and capricious exercise of agency power, infringing upon the rights of noncitizens and violating the principles enshrined in the *Accardi* doctrine.

195. The policy's blanket application denies noncitizens the due process rights afforded under the Fifth Amendment, which guarantees fair procedures before depriving individuals of their liberty. By eliminating bond eligibility, ICE's policy strips noncitizens of the opportunity to meaningfully contest their detention. This issue is further exacerbated by EOIR's decision in *Yajure Hurtado*, which entrenches this denial of due process by reclassifying noncitizens who entered without inspection as "arriving aliens," thereby subjecting them to mandatory detention without the possibility of bond from immigration judges. Together, these agency actions undermine the statutory and constitutional protections afforded to noncitizens, and therefore, this Court should declare these actions unlawful and set them aside.

COUNT ELEVEN

Unlawful Arrest

196. Petitioners reallege and incorporate by reference all paragraphs above as if fully set forth here.

197. Petitioners' initial arrest and continued detention by Respondents constitutes unlawful detention in violation of the Fourth and Fifth Amendments to the United States Constitution, the Immigration and Nationality Act (INA), and applicable regulations.

198. Petitioners were arrested in the interior of the United States without a warrant, without probable cause, and without exigent circumstances, in violation of the Fourth Amendment and 8 U.S.C. § 1357(a)(2) and 8 C.F.R. § 287.8(b)(2).

199. 8 U.S.C. § 1357(a)(2) authorizes immigration officers to arrest a noncitizen without a warrant only if the officer has reason to believe the person is in the United States in violation of law and is likely to escape before a warrant can be obtained. The corresponding regulation, 8 C.F.R. § 287.8(b)(2), sets forth the procedural and substantive requirements for such warrantless arrests. It requires that: (1) An immigration officer must have "reason to believe" based on "specific facts and circumstances" that the person is in violation of immigration law and is likely to escape

before a warrant can be obtained; (2) The regulation further requires that the officer's actions be based on individualized, articulable facts—not on generalized assumptions or stereotypes.

200. The government's actions violate the Due Process Clause of the Fifth Amendment, the INA and their own regulations in the manner Petitioners were arrested. There was no justification to arrest Petitioners without a warrant.

XIV. REMEDIES

THE APPROPRIATE REMEDY FOR PETITIONERS' UNLAWFUL DETENTION IS IMMEDIATE RELEASE

201. Given the egregious constitutional and statutory violations underlying Petitioner's arrest and continued detention, the only effective and constitutionally sufficient remedy is immediate and unconditional release. Federal courts possess broad authority under 28 U.S.C. § 2243 to "dispose of the matter as law and justice require," which includes ordering immediate release when detention is found to be unlawful. See *Hilton v. Braunskill*, 481 U.S. 770, 775 (1987); *Rosado v. Figueroa*, 2025 WL 2337099, at *19 (D. Ariz. Aug. 11, 2025).

202. Even though some cases cited in the Exhibit 1 of the favorable

Federal Court cases granted bond hearings to noncitizens who won TROs, PIs and habeas relief, many of those cases and a growing number of decisions granted straight release relief to petitioners in similar circumstances. In addition, there are several important reasons that include new developments since those cases were decided that warrant a different relief now in this case.

Bond Hearing Will Require More Detention Time

203. If the Court orders a bond hearing before an immigration judge, it will take several more days or weeks to schedule a bond hearing, at additional costs to Petitioner, while she remains detained, in a situation where Respondents have not even alleged, yet alone proven, that he is a danger or flight risk. Respondents have not produced a single shred of evidence why he should not be released.

Bond Hearing Cannot Cure Unlawful Arrest

204. Petitioners' arrest and continued detention are unlawful from the outset because he was not arrested pursuant to a warrant under 8 U.S.C. § 1226, as required for interior apprehensions, but was instead detained as a purported "applicant for admission" under § 1225(b)—a provision that, by its terms and longstanding practice, applies only to individuals encountered at the border or a port of entry, not to long-term residents apprehended in the interior. This

courts have clarified that the plain language of the statutory provisions indicates that § 1226(a), rather than § 1225(b), governs the detention of individuals like the Petitioners who entered without inspection. The challenge lies in the fact that habeas relief is granted on an individual basis, not on a class-wide scale, necessitating that courts tailor their findings to the specific circumstances of each person applying for a writ of habeas corpus.

XI. STATUTORY FRAMEWORK OF THE INA

Section 1225 Is Titled "Inspection"

98. Section 1225 is titled "Inspection of applicants for admission" and is designed to govern the process of inspecting individuals at the border or port of entry. It is not intended to apply to noncitizens who entered unlawfully years ago and have since established residence in the interior. Congress provided a separate detention regime under § 1226(a) for noncitizens apprehended in the interior, which allows for individualized bond hearings and discretionary release. To collapse these regimes and subject all interior apprehensions to mandatory detention under § 1225(b) would render § 1226(a) superfluous and contradict decades of agency and judicial practice.

protections before being deprived of liberty, including a fair hearing and individualized assessment by a neutral decisionmaker. See *Landon v. Plasencia*, 459 U.S. 21, 32 (1982); *Kwong Hai Chew v. Colding*, 344 U.S. 590, 596 (1953). These protections are not mere formalities; they are fundamental constitutional guarantees that ensure the government cannot arbitrarily detain individuals without meaningful process and an impartial adjudicator.

208. Recent developments have gravely undermined the neutrality and independence of the immigration court system. Widespread reports and credible evidence indicate that, following mass firings and administrative reshuffling, many immigration judges now operate under the threat of removal or discipline if they grant relief to noncitizens, including bond or release, and they basically do what DHS asks them to. This climate of fear and institutional pressure has eroded the essential independence of immigration judges, transforming them from neutral arbiters into functionaries who may feel compelled to deny relief to avoid professional jeopardy. The result is a system where noncitizens cannot be assured of a fair and impartial hearing on their liberty—a core requirement of due process. There is no proper oversight over the

immigration judges and as a result, if an immigration judge denies bond, Petitioner will continue to be detained for months or years while the bond appeal is pending with the BIA.

Even If An Immigration Judge Grants Bond – ICE Will Appeal and Continue Detention

209. Even in the rare circumstances these days where Immigration Judges are granting bonds, DHS is appealing all bond grants to the Board of Immigration Appeals and uses an ultra vires automatic stay regulation to keep people detained for months without cause or due process. What used to be a process used very sparingly (in undersigned counsel's 26 years of practice was never used by DHS on any one of her clients), is now an automatic process used by DHS every time an immigration judge grants bond. The regulation has been declared ultra vires and unconstitutional, as determined by dozens of courts around the country, including two decisions in undersigned counsel's cases. For brevity, see the following cases and the reasons and analysis in these decisions: *Campos Leon v. Forestal*, No. 1:25-cv-01774-SEB-MJD, 2025 WL 2694763 (S.D. Ind., Sep. 22, 2025) and *B.D.V.S. v. Forestal*, No. 1:25-cv-01968-SEB-TAB, 2025 WL 2855743 (S.D. Ind., Oct. 8, 2025).

Only Bond Hearing In Federal Court Would Be Proper

210. Given these circumstances, if the Court determines that full release is unwarranted and a bond hearing is warranted, Petitioner respectfully requests that it be conducted in federal court, before an Article III judge. Federal judges are insulated from political and administrative pressures and are well-versed in the requirements of due process, the standards for bond, and the constitutional imperative of neutrality. Only a truly independent judicial officer can ensure that Petitioner receives the fair, individualized assessment that the Constitution demands. Anything less would risk compounding the due process violations already at issue and would fail to provide the meaningful hearing required by *Landon, Kwong Hai Chew*, and the Fifth Amendment itself. The Court should therefore retain jurisdiction over any bond hearing to guarantee the integrity and fairness of the process.

If Court Grants Bond Hearing – Ensure Burdens Are Met

211. Should the Court grant a bond hearing, since there is no 6th Circuit caselaw on who carries the burden of proof, the Court should follow the 3 circuit courts who have decided the issue and determine that the government must prove, by clear and convincing evidence, that Petitioner is not a flight risk or danger.

Diaz v. Garland, 53 F.4th 1189, 1196 (9th Cir. 2022); *Velasco Lopez v. Decker*, 978 F.3d 842, 853–56 (2d Cir. 2020); *Hernandez-Lara v. Lyons*, 10 F.4th 19 (1st Cir. 2021). The reason for that is the Congress's assumption was that for non-criminal noncitizens who are detained pursuant to § 1226(a) the default is release, not detention (in contrast to § 1226(c) that deals with mandatory detention for criminal aliens).

XV. SUPPRESSION OF EVIDENCE AND TAINT OF UNLAWFUL ARREST

212. The constitutional violations underlying Petitioner's arrest and detention have direct and far-reaching consequences for the lawfulness of his continued custody. Because the arrest was effected without a warrant, without probable cause, and in the absence of individualized suspicion—relying instead on generalized assumptions and impermissible factors such as ethnicity and mere proximity to a surveilled location—any evidence obtained as a result of that arrest is tainted and must be suppressed as fruit of the poisonous tree.

A. The Fruit of the Poisonous Tree Doctrine Applies

213. The Supreme Court has long held that evidence obtained through unconstitutional means—whether in the form of statements,

documents, or identity information—must be excluded to deter unlawful conduct by law enforcement and to preserve the integrity of judicial proceedings. See *Wong Sun v. United States*, 371 U.S. 471, 484–88 (1963). This exclusionary rule applies with full force to immigration enforcement actions, where the Fourth Amendment's protections against unreasonable searches and seizures are fully applicable. Petitioner's arrest was not supported by specific, articulable facts, but was instead the product of a pretextual and discriminatory stop, lacking the individualized suspicion required by *Terry v. Ohio*, 392 U.S. 1, 21–22 (1968), and its progeny.

B. The Taint of Illegality Cannot Be Cured by Subsequent Proceedings

214. While the scope of this habeas action is limited to challenging the lawfulness of detention rather than the removal proceedings themselves, the taint of the initial illegality cannot be ignored. The government should not be permitted to rely on evidence obtained through unconstitutional means to justify continued detention. The Supreme Court has recognized that the exclusionary rule serves not only to deter future violations but also to ensure that courts do not become complicit in the use of unlawfully obtained

evidence. See Nardone v. United States, 308 U.S. 338, 341 (1939). Where, as here, the arrest and subsequent detention are the direct result of an unlawful seizure, the only appropriate remedy is to suppress all evidence derived from that illegality and to order immediate release from custody.

C. Suppression Is the Only Effective Remedy

215. Permitting the government to cure the defect by subsequent proceedings or after-the-fact justifications would undermine the constitutional protections at stake and incentivize further unlawful conduct. The exclusionary rule is designed to prevent precisely this type of post hoc rationalization. As the Supreme Court has stated, "[t]he essence of a provision forbidding the acquisition of evidence in a certain way is that not merely evidence so acquired shall not be used before the Court but that it shall not be used at all." *Silverthorne Lumber Co. v. United States*, 251 U.S. 385, 392 (1920). The government's continued reliance on evidence obtained through an unlawful arrest to justify Petitioner's detention is fundamentally incompatible with the Constitution and the statutory framework governing immigration enforcement.

D. Immediate Release is Warranted

216. Given the egregious statutory and constitutional violations

Petitioner's arrest and continued detention, the only effective and constitutionally sufficient remedy is immediate and unconditional release. Federal courts possess broad authority under 28 U.S.C. § 2243 to "dispose of the matter as law and justice require," which includes ordering immediate release when detention is found to be unlawful. See *Hilton v. Braunskill*, 481 U.S. 770, 775 (1987); *Rosado v. Figueroa*, 2025 WL 2337099, at 19 (D. Ariz. Aug. 11, 2025) (ordering immediate release as the only remedy for unlawful immigration detention).

217. Requiring Petitioner to remain incarcerated while awaiting a bond hearing, when his arrest and detention were unlawful from the outset, would only compound the ongoing violation of his rights and perpetuate irreparable harm. A bond hearing would result in further unnecessary detention, imposing additional costs and hardship on Petitioner and his family, despite the absence of any lawful basis for his continued custody. The government cannot retroactively cure an unlawful deprivation of liberty by later manufacturing a post hoc justification or issuing a belated warrant. See *Wong Sun v. United States*, 371 U.S. 471, 484–88 (1963); *Silverthorne Lumber Co. v. United States*, 251 U.S. 385, 392 (1920). As in *Rosado v. Figueroa*, the only appropriate remedy for

an arrest and detention made under the wrong statutory authority is immediate and unconditional release. Immediate release is the only remedy that will restore Petitioner to the status quo ante and vindicate his constitutional and statutory rights. The Court should so order.

XVI. CONCLUSION AND PRAYER FOR RELIEF

Given the egregious constitutional and statutory violations underlying Petitioner's arrest and continued detention, the only effective and constitutionally sufficient remedy is immediate and unconditional release. Federal courts possess broad authority under 28 U.S.C. § 2243 to "dispose of the matter as law and justice require," which includes ordering immediate release when detention is found to be unlawful. See *Hilton v. Braunskill*, 481 U.S. 770, 775 (1987); *Rosado v. Figueroa*, 2025 WL 2337099, at *19 (D. Ariz. Aug. 11, 2025).

WHEREFORE, Petitioner prays that this Court grant the following relief:

(1) GRANT the Petition for Writ of Habeas Corpus;

(2) DECLARE that Petitioners' arrest was unlawful and that all evidence and proceedings derived from the unlawful arrest

are tainted and must be set aside;

(3) ORDER Petitioners' immediate and unconditional release from custody;

(4) ENJOIN Respondents from re-detaining Petitioners unless they have committed a new violation of any federal, state, or local law, or have failed to attend any properly noticed immigration or court hearing or are subject to detention pursuant to a final order of removal;

(5) SUPPRESS all evidence and proceedings derived from the unlawful arrest;

(6) DECLARE that Petitioners are not an "arriving alien" or "applicant for admission" subject to mandatory detention under 8 U.S.C. § 1225(b), and that their detention is governed by 8 U.S.C. § 1226(a);

(7) AWARD Petitioners reasonable attorneys' fees and costs incurred in this action; and

(8) GRANT such other and further relief as this Court deems just, proper or equitable under the circumstances.

Respectfully Submitted,

This 12th day of December, 2025.

/s/ Karen Weinstock
Karen Weinstock
Attorney for Petitioners
Weinstock Immigration Lawyers, P.C.
1827 Independence Square
Atlanta, GA 30338
Phone: (770) 913-0800
Fax: (770) 913-0888
kweinstock@visa-pros.com

28 U.S.C. § 2242 VERIFICATION STATEMENT

I am submitting this verification on behalf of the Petitioner because I am the Petitioners' attorney. I have discussed with Petitioners' family members and have reviewed various documents for Petitioner. On the basis of those discussions, I hereby verify that I have reviewed the foregoing Petition and that the facts and statements made in this Petition and Complaint are true and correct to the best of my knowledge or belief pursuant to 28 USC § 2242.

This 12th day of December, 2025.

/s/ Karen Weinstock
Karen Weinstock
Attorney for Petitioners
Weinstock Immigration Lawyers, P.C.
1827 Independence Square
Atlanta, GA 30338
Phone: (770) 913-0800
Fax: (770) 913-0888
kweinstock@visa-pros.com

CERTIFICATE OF COMPLIANCE

I hereby certify, pursuant to Local Rules 5.1 and 7.1(D), that the filing(s) filed herewith have been prepared using Century Schoolbook, 13 point font.

/s/ Karen Weinstock
Karen Weinstock
Attorney for Petitioners
Weinstock Immigration Lawyers, P.C.
1827 Independence Square
Atlanta, GA 30338
Phone: (770) 913-0800
Fax: (770) 913-0888
kweinstock@visa-pros.com

FAVORABLE DISTRICT COURT CASES FROM AROUND THE U.S. FINDING DETENTION FOR LONG-TIME RESIDENTS IN THE U.S. UNLAWFUL UNDER 8 U.S.C. §1225 AND APPLYING 8 U.S.C. 1226(a)[1]

1. *Savane v. Francis*, No. 1:25-cv-6666, 2025 WL 2774452 (S.D.N.Y. Sept. 28, 2025) **(Petitioner arrested pursuant to 1225 which was improper; habeas petition granted, and immediate release ordered within one business day)**;
2. *Artiga v. Genalo*, No. 25-CV-5208, 2025 WL 2829434 (E.D.N.Y. Oct. 5, 2025) **(Petitioner unlawfully detained pursuant to 1225, government ordered to transport Petitioner back to EDNY within 24 hours and immediately upon effectuating his transfer, to release him from custody)**;
3. *J.U. v. Maldonado*, No. 25-CV-04836, 2025 WL 2772765 (E.D.N.Y. Sept. 29, 2025) given the deprivation of Petitioner's liberty, the absence of any deliberative process prior to or contemporaneous with the deprivation, and the statutory and constitutional rights implicated, immediate release ordered);
4. *Jose Alejandro v. Olson,* No. 1:25-cv-02027-JPH-MKK, 2025 WL 2896348 (TRO/PI obtained by undersigned counsel for a noncitizen who has lived in the U.S. for approximately 24 years after entering without inspection. "**Respondents' argument that § 1225(b)(2)(A) applies to all noncitizens present in the United States without admission is unpersuasive; Respondents'**

[1] Last updated: December 2, 2025. Note, undersigned counsel read the cases which have () remarks but has not yet fully read all of these cases cited herein; they were obtained from a credible source at the American Immigration Lawyers Association. Some were Writ of Habeas cases granted in full, some TRO's or PI's.

interpretation of the statute (1) disregards the plain meaning of § 1225(b)(2)(A); (2) disregards the relationship between §§ 1225 and 1226; (3) would render a recent amendment to § 1226(c) superfluous[2]; and (4) is inconsistent with decades of prior statutory interpretation and practice);

5. *Cuevas Guzman v. Andrews*, 2025 WL 2617256 (E.D. Cal. Sept. 9, 2025), (petitioner entered without inspection more than 30 years ago, detained pursuant to 1225, **court found 1226(a) applied based on statutory language; PI granted and court ordered release**);

6. *Guerrero Lepe v. Andrews*, No. 1:25-cv-01163, 2025 WL 2716910 (E.D. Cal. Sept. 23, 2025) ("**seeking" means "asking for" or "trying to acquire or gain" and implies some kind of affirmative action on the part of the applicant;** (holding that petitioner was likely to succeed under the merits that he was not subject to section 1225 and was wrongfully denied a bond hearing pursuant to section 1226(a), stating "[t]he Court is not bound by Matter of Yajure Hurtado's interpretation of sections 1225 and 1226[,]" and may look to the "longstanding practice of government" and "the BIA's interpretations of the INA for guidance, but [it] must not defer to the agency.");

---

[2] Referring to the recent amendments based on the Laken-Riley Act that added certain offenses to the mandatory detention category. If, as Respondents contend, all noncitizens illegally present are "applicants for admission" and "arriving aliens", almost all noncitizens (other than those who arrived with a visa and overstay) are subject to mandatory detention and those amendments would not be necessary.

7. *Belsai D.S. v. Bondi*, No. 25-CV-3682 (KMM/EMB), 2025 WL 2802947 (D. Minn. Oct. 1, 2025) (finding **detention under § 1225(b)(2) ultra vires where petitioner entered years before arrest**);

8. *Edward Ted Luna Quispe v. Crawford*, No. 1:25-CV-1471-AJT-LRV, 2025 WL 2783799 (E.D. Va. Sept. 29, 2025) (**ordering release where ICE applied § 1225(b)(2) to long-term resident**);

9. *Echevarria v. Bondi*, 2025 WL 2821282 (D. Ariz. Oct. 3, 2025), entered without inspection in 2001, arrested in 2025 under 1225(b); **the 24 year period petitioner resided in the U.S. made the plain language of 1225(b) was inapplicable to him, at the time of arrest an immigration officer was not "examining" him and he was not "seeking" admission; Based on *Jennings* and *Nielsen*, statutory scheme of 1226(a) applies**);

10. *Rodriguez v. Bostock*, No. 3:25-CV-05240-TMC, 2025 WL 2782499, at *27 (W.D. Wash. Sept. 30, 2025) (granting summary judgment to class members and holding bond denial under § 1225(b)(2) unlawful);

11. *Ozuna Carlon v. Kramer*, No. 4:25CV3178, 2025 WL 2624386, at *2-3 (D. Neb. Sept. 11, 2025) (holding petitioner under section 1226 was unlawfully detained by an ultra vires stay during appeal of petitioner's bond approval, and was entitled to release pursuant to bond hearing where (1) the government itself charged petitioner as an "alien present in the United States who has not been admitted or paroled", i.e. section 1226, instead of an "arriving alien", i.e. section 1225; (2) **petitioner was being held in county jail with criminal inmates and**

without her family pursuant to a stay challenging an authorized bond; and (3) the government made no showing of any special justification or compelling interest that would justify depriving petitioner of her ordered liberty);

12. *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025) (the phrase "seeking admission" means that a noncitizen must be actively "seeking" "lawful entry")"

"This understanding accords with the plain, ordinary meaning of the words "seeking" and "admission." **For example, someone who enters a movie theater without purchasing a ticket and then proceeds to sit through the first few minutes of a film would not ordinarily then be described as "seeking admission" to the theater. Rather, that person would be described as already present there**. Even if that person, after being detected, offered to pay for a ticket, one would not ordinarily describe them as "seeking admission" (or "seeking" "lawful entry") at that point—one would say that they had entered unlawfully but now seek a lawful means of remaining there. As § 1225(b)(2)(A) applies only to those noncitizens who are actively "seeking admission" to the United States, it cannot, according to its ordinary meaning, apply to Mr. Lopez Benitez, because he has already been residing in the United States for several years." *Lopez Benitez v. Francis*, —— F.Supp.3d at ——, 2025 WL 2371588, at *7.

13. *Maldonado Vazquez v. Feeley*, 2025 WL 2676082 (D. Nev. Sept. 17, 2025) (entered without inspection over 20 years ago; detained July 2025; **court help petitioner held pursuant to 1226(a) not as the government contends 1225(b)(2); Yajure Hurtado renders requiring prudential exhaustion futile;** PI granted and release ordered on IJ bond);

14. *Rodriguez Vazquez v. Bostock,* 2025 WL 2782499 (W.D. Wash Sept. 30, 2025) (**court granted summary judgement** on behalf of a class of people without lawful status held in Tacoma who entered without inspection and not apprehended upon arrival, court held plain text of **1226(a) applies rather than 1225(b) and issues a detailed statutory analysis**);

15. *Guzman Alfaro v. Wamsley*, 2025 WL 2822113 (W.D. Wash. Oct. 2, 2025) (court granted similar relief as a class member of *Rodriguez Vasquez)*;

16. *Garcia Cortes v. Noem*, No. 1:25-cv-02677, 2025 WL 2652880 (D. Colo. Sept. 16, 2025) (**Court held 1226(a) and not 1225(b)(2) authorizes detention; procedural due process violated under Mathews, habeas granted**);

17. *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025) (granting petition for writ of habeas corpus ordering immediate release or bond hearing, where, for 30 years, **courts have applied section 1226(a) to noncitizens like the petitioner who was already in the United States but facing removal, rejecting the government's argument that section 1225 applied so no bond hearing was required**);

18. *Mena Torres v. Wamsley*, No. C25-5772 TSZ, 2025 WL 2855379 (W.D. Wash. Oct. 8, 2025) (Petitioner arrived without inspection in 2016, DEA encountered him in an unrelated search warrant and detained him under 1225(b)(2), court found that detention governed by 1226(a);
19. *Jimenez v. FCI Berlin*, Warden, No. 1:25-cv-00326, 2025 WL 2639390 (D.N.H. Sept. 8, 2025) (detained under § 1226, and continued detention without a bond hearing before an IJ is unlawful);
20. *Kostak v. Trump*, No. 3:25-cv-01093, 2025 WL 2472136 (W.D. La. Aug. 27, 2025) (granting a TRO for a native Ukraine citizen, who entered the U.S. without being inspected by an immigration officer and applied for asylum, because her due process rights were violated without a bond hearing pursuant to section 1225(a));
21. *Pizarro Reyes v. Raycraft*, No. 25-cv-12546, 2025 WL 2609425, at *4-5 (E.D. Mich. Sept. 9, 2025) (granting petition for writ of habeas corpus for petitioner for government's failure to conduct a bond hearing pursuant to section 1226(a), rejecting the government's argument that section 1225 applied because petitioner did not enter lawfully so was still "seeking admission", where the petitioner had been living in the United States since 2005 and the amendment to section 1226 via the Laken Riley Act would have been redundant were section 1225 to apply);
22. *Hernandez Marcelo v. Trump*, No. 3:25-cv-00094, 2025 WL 2741230 (S.D. Iowa Sept. 10, 2025) (refusing to apply BIA's Yajure Hurtado decision finding that all applicants for admission are necessarily "seeking admission" for purposes of warranting application of section 1225, because "the legislative history and

congressional intent of the Immigration and Nationality Act do not support mandatory detention for all noncitizens present in the United States" as further supported by the "weight of caselaw");

23. *Zaragoza Mosqueda et al. v. Noem*, No. 5:25-cv-02304 CAS (BFM), 2025 WL 2591530, at *4–5, 7 (C.D. Cal. Sep. 8, 2025) (holding that the petitioners are entitled to an individual bond hearing by an immigration judge if the government chooses to continue to detain petitioners, agreeing that the plain text of section 1226(a) applies to the petitioners);

24. *Quispe-Ardiles v. Noem*, No. 1:25-cv-01382-MSN-WEF, 2025 WL 2783800, at *1, 10 (E.D. Va. Sep. 30, 2025) (finding that the noncitizen petitioner was subject to section 1226(a) because he was detained after entering the U.S. illegally, issued an order of recognizance, and placed in immigration removal proceedings; therefore, his detention by ICE was unlawful unless he was released on bond);

25. *Giron Reyes v. Lyons*, No. C25-4048-LTS-MAR, 2025 WL 2712427, at * (N.D. Iowa Sept. 23, 2025) (ordering petitioner was entitled to bond hearing under section 1226, pursuant to the Dataphase factors, because applying section 1225 would act to require "mandatory detention of every unadmitted alien" even if the alien falls within an exception provided, where petitioner had built a life and presence in the community in the United States for two decades, and requiring the government to hold a bond hearing had limited imposition on government's interest in controlling aliens in the United States);

26. *Aguilar Lares v. Bondi,* No. 1:25-cv-01562 (ED VA, Oct. 19, 2025) (1226 applies to Guatemalan who entered the country in 2005; statutory distinction between noncitizens who are detained upon arrival into the United States and those who are detained after they have already entered the country, legally or otherwise (citing *Abreu v. Crawford*, 2025 WL 51475, at *3 (E.D. Va. Jan 8, 2025); analysis of SCOTUS *Jennings v. Rodriguez*).

27. *Palma Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at *2 (D. Neb. Sept. 3, 2025) ("[t]he Court tends to agree" that § 1226(a) and not § 1225(b)(2) authorizes detention);

28. *Hasan v. Crawford*, No. 1:25-cv-1408 (LMB/IDD), 2025 WL 2682255, at *1, 13 (E.D. Va. Sep. 19, 2025) (finding that due process was required for a noncitizen from Bangladesh who entered the U.S. without inspection, applied for asylum, and was released on his own recognizance because he was detained by ICE without due process).

29. *Lopez v. Hardin*, No. 2:25-CV-830-KCD-NPM, 2025 WL 2732717, at *2 (M.D. Fla. Sept. 25, 2025) (holding that long-term interior residents fall under § 1226(a), not § 1225(b)(2));

30. *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025) (granting petitioner's habeas corpus petition, who was released on his own recognizance and in immigration removal proceedings, ordering the government to provide the petitioner with a bond hearing pursuant to section 1226(a));

31. *Singh v. Andrews*, No. 1:25-cv-00801-KES-SKO (HC), 2025 WL 1918679, at *1, 10 (E.D. Cal. July 11, 2025) (granting preliminary injunction in favor of releasing an asylum seeker who was in immigration removal proceedings and detained by ICE because he cannot be detained without due process, which would be a bond hearing to decide if he is a danger to the community or a flight risk);

32. *Singh v. Lewis*, No. 4:25-cv-96-RGJ, 2025 WL 2699219, at *3, *5 (W.D. KY. Sept. 22, 2025) (stating that petitioner present in the United States for over 12 years was not "seeking admission" into the United States and was therefore under the purview of section 1226, subsequently finding that the petitioner's detention via an automatic stay violated his due process rights);

33. *J.A.M. v. Streeval*, No. 25-cv-342, 2025 WL 3050094 (M.D. Ga. Nov. 1, 2025) (The phrase "seeking admission" is not synonymous with "present in the United States who has not been admitted." It requires an active attempt to gain lawful entry, not mere presence. The statutory scheme and headings of § 1225 focus on inspection and admission at the border or upon arrival, not on long-term residents apprehended in the interior; rejected the BIA's interpretation in *Yajure Hurtado* as inconsistent with statutory text and canons of construction; Harmonizing §§ 1225 and 1226, the court held that § 1226(a) applies to aliens arrested in the interior who are not actively seeking admission, entitling them to a bond hearing);

34. *Rojano Gonzalez v. Sterling*, No. 1:25-cv-6080, 2025 WL 3145764 (N.D. Ga. Nov. 3, 2025) (Detention governed by § 1226(a), Petitioner to be provided with a bond

hearing within 3 days or released; Government ENJOINED from rearresting Petitioner, unless she has committed a new violation of any federal, state, or local law, or has failed to attend any properly noticed immigration or court hearing or is subject to detention pursuant to a final order of removal);

35. *Aguirre Villa v. Normand*, No. 5:25-cv-89, 2025 WL 3095969 (S.D. Ga. Nov. 4, 2025) (R&R), report and recommendation adopted (Nov. 14, 2025) (detention of long-term residents apprehended in the interior is governed by § 1226(a), not mandatory detention under § 1225(b); *Yajure Hurtado* rejected; Petitioner entitled to immediate release subject to the prior bond order or without conditions if the bond order cannot be reinstated);

36. *Jose Augusto Alves da Silva v. U.S. Immigr. & Customs Enf't*, No. 25-CV-284-LM-TSM, 2025 WL 2778083 (D.N.H. Sept. 29, 2025) (granting habeas relief and ordering bond hearing);

37. *Merino v. Ripa*, No. 25-23845-CIV, 2025 WL 2941609 (S.D. Fla. Oct. 15, 2025) (EWI in 2016 Honduran national's detention is governed by 1226; Yajure Hurtado's interpretations of 1225 are at odds with the statutory text, inconsistent with earlier BIA decisions and renders superfluous the recent Laken Riley Act).

38. *Alvarez Puga v. Assistant Field Office Director*, No. 25-24535-CIV, 2025 WL 2938369 (S.D. Fla. Oct. 15, 2025).

39. *Giron Reyes v. Lyons*, No. C25-4048-LTS-MAR, 2025 WL 2712427, at *6 (N.D. Iowa Sept. 23, 2025) (granting bond hearing pursuant to § 1226(a));

40. *Roman v. Noem*, No. 2:25-CV-01684-RFB-EJY, 2025 WL 2710211, at *6 (D. Nev. Sept. 23, 2025) (same);

41. *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *13 (W.D. Tex. Sept. 22, 2025) (collecting authorities requiring bond hearings for long-term residents);

42. *Barrera v. Tindall*, No. 3:25-CV-541-RGJ, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025) (granting habeas petition under § 1226(a));

43. *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025);

44. *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025);

45. *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025);

46. *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025);

47. *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025);

48. *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025);

49. *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d ----, 2025 WL 2466670 (D. Minn. Aug. 27, 2025);

50. *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025);

51. *Hernandez Nieves v. Kaiser*, No. 25-cv-06921-LB, 2025 WL 2533110, at *4–5 (N.D. Cal. Sep. 3, 2025);

52. *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 at *3 (D. Neb. Aug. 19, 2025) (same);

53. *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-RCC, 2025 WL 2374224 at *2 (D. Neb. Aug. 14, 2025) (same);

54. *Salazar v. Dedos*, No. 1:25-CV-00835-DHU-JMR, 2025 WL 2676729, at *9 (D.N.M. Sept. 17, 2025) (granting bond hearing under § 1226(a));

55. *Ledesma Gonzalez v. Bostock*, No. 2:25-cv-01404,2025 WL 2841574 (W.D. Wash. Oct. 7, 2025);

56. *Ortiz Martinez v. Wamsley*, No. 2:25-cv-01822, 2025 WL 2899116 (W.D. Wash. Oct. 10, 2025);

57. *Mendoza Gutierrez v. Baltasar*, No. 1:25-cv-2720, 2025 WL 2962908 (D. Colo. Oct. 17, 2025);

58. *Moya Pineda v. Baltasar*, No. 1:25-cv-2966 (D. Colo. Oct. 20, 2025);

59. *Loa Caballero v. Baltazar*, No. 25-cv-03120, 2025 WL 2977650 (D. Colo. Oct. 22, 2025);

60. *Gamez Lira v. Noem*, No. 1:25-cv-00855, 2025 WL 2581710 (D.N.M. Sept. 24, 2025);

61. *Garcia Domingo v. Castro*, No. 1:25-cv-00979, 2025 WL 2941217 (D.N.M. oct. 15, 2025);

62. *Aguilar Merino v. Ripa*, No. 25-cv-23845, 2025 WL 2941609 (S.D. Fla. Oct. 15, 2025);

63. *Martinez v. Hyde*, No. 1:25-cv-11613, 2025 WL 2084238 (D. Mass. July 24, 2025);

64. *Diaz Diaz v. Mattivelo*, No. 1:25-cv-12226, 2025 WL 2457610 (D. Mass. Aug. 27, 2025);

65. *Doe v. Moniz*, No. 1:25-cv-12094, 2025 WL 2576819 (D. Mass. Sept. 5, 2025);

66. *Encarnacion v. Moniz*, No. 25-12237 (D. Mass. Sept. 5, 2025);

67. *Hilario Rodriguez v. Moniz*, No. 25-12358 (D. Mass. Sept. 18, 2025);

68. *Romero-Nolasco v. McDonald*, No. 25-cv-12492, 2025 WL 2778036 (D. Mass. Sept. 29. 2025);

69. *Inlago Tocagon v. Moniz*, No. 25-cv-12453, 2025 WL 2778023 (D. Mass. Sept. 29, 2025);

70. *Rocha v. Hyde*, No. 25-cv-12584, 2025 WL 2807692 (D. Mass. Oct. 2, 2025);

71. *Guerrero Orellana v. Moniz*, No. 25-cv-12664, 2025 WL 2809996 (D. Mass. Oct. 3, 2025);

72. *Lema Zamora v. Noem*, No. 25-cv-12750, 2025 WL 2958879 (D. Mass. Oct. 17, 2025);

73. *Da Silva v. Bondi*, No. 25-cv-12672, 2025 WL 2969163 (oct. 21, 2025, D. Mass);

74. *Chogllo Chafla v. Scott*, No. 2:25-cv-00437, 2:25-cv-00438, 2:25-cv-00439, 2025 WL 2688541 (D. Me. Sept. 2, 2025);

75. *Chang Barrios v. Shepley*, No. 1:25-cv-00406, 2025 WL 2772579 (D. Me. Sept. 29, 2025);

76. *Chiliquinga Yumbillo v. Stamper*, No. 2:25-cv-479, 2025 WL 2783642 (D. Me. Sept. 30, 2025);

77. *Perez Pina v. Stamper*, No. 2:25-cv-00509-SDN, 2025 WL 2939298 (D. Me. Oct. 16, 2025);

78. *da Silva v. ICE*, No. 1:25-cv-00284, 2025 WL 2778083 (D.N.H. Sept. 29, 2025);

79. *Ayala Casun v. Hyde*, No. 25-cv-427, 2025 WL 2806769 (D.R.I. oct. 2, 2025);

80. *Caraballo Gonzalez v. Joyce*, No. 25-cv-8250, 2025 WL 2961626 (S.D.N.Y. oct. 19, 2025);

81. *Rivera Zumba v. Bondi*, No. 2:25-cv-14626, 2025 WL 2753496 (D.N.J. Sept. 26, 2025);

82. *Macancela Buestan v. Chu*, No. 25-cv-16034, 2025 WL 2972252 (D.N.J. oct. 21, 2025);

83. *Mugliza Castillo v. Lyons*, No. 25-cv-16219, 2025 WL 2940990 (D. N.J. October 10, 2025);

84. *Del Cid Del Cid v. Bondi*, No. 3:25-cv-00304, 2025 WL 2985150 (W.D. Pa. Oct. 23, 2025);

85. *Maldonado de Leon v. Baker*, No. 1:25-cv-3084, 2025 WL 2968042 (D. Md. Oct 21, 2025);

86. *Hasan v. Crawford*, No. 1:25-cv-01408, 2025 WL 2682255 (E.D. Va. Sept. 19, 2025);

87. *Singh v. Lyons*, No. 1:25-cv-01606, 2025 WL 2932635 (E.D. Va. Oct. 14, 2025);

88. *Teyim v. Perry*, No. 1:25-cv-01615, 2025 WL 2950183 (E.D. Va. Oct. 15, 2025);

89. *S.D.B.B. v. Johnson*, No. 1:25-cv-882, 2025 WL 2845170 (M.D.N.C. Oct. 7, 2025);

90. *Lopez Santos v. Noem*, No. 3:25-cv-01193, 2025 WL 2642278 (W.D. La. Sept. 11, 2025);

91. *Gonzalez Martinez v. Noem*, No. EP-25-cv-430, 2025 WL 2965859 (W.D. Tex. Oct. 21, 2025);

92. *Buenrostro Mendez v. Bondi*, No. No. 4:25-cv-3726, 2025 WL 2886346 (S.D. Tex. Oct. 7, 2025);

93. *Padron Covarrubias v. Vergara*, 5:25-CV-112 (S.D. Tex. Oct. 8, 2025);

94. *Sanchez Ballestros v. Noem*, No. 3:25-cv-594-RGJ, 2025 WL 2880831 (W.D. Ky. Oct. 9, 2025);

95. *Casio-Mejia*, No. 2:25-cv-13032, 2025 WL 2976737 (E.D. Mich. Oct. 21, 2025);

96. *Contreras-Cervantes, et al., v. Raycraft*, No. 2:25-cv-13073, 225 WL 952796 (E.D. Mich. Oct. 17, 2025);

97. *Sanchez Alvarez v. Noem*, No. 1:25-cv-1090, 2025 WL 2942648 (W.D. Mich. Oct. 17, 2025);

98. *Morales Chavez v. Director*, No. 4:25-cv-02061, 2025 WL 2959617 (N.D. Ohio Oct. 20, 2025) (report and recommendation);

99. *H.G.V.U. v. Smith*, No. 25-cv-10931, 2025 WL 2962610 (N.D. Ill. Oct. 20, 2025);

100. *Ochoa Ochoa v. Noem*, No. 25 CV 10865, 2025 WL 2938779, (N.D. Ill. Oct. 16, 2025);

101. *Mariano Miguel v. Noem*, No. 25-cv-11137, 2025 WL 2976480 (Oct. 21, 2025);

102. *Alejandro v. Olson*, No. 1:25-cv-02027, 2025 WL 2896348 (S.D. Ind.);

103. *Brito Barrajas v. Noem*, No. 4:25-cv-00322, 2025 WL 2717650 (S.D. Iowa Sept. 23, 2025);

104. *Santiago Helbrum v. Williams*, No. 4:25-cv-00349 (S.D. Iowa Sept. 30, 2025);

105. *O.E. v. Bondi*, No. 0:25-cv-03051, 2025 WL 2466670 (D. Minn. Aug. 27, 2025);

106. *Francisco T. v. Bondi*, No. 0:25-cv-03219, 2025 WL 262839 (D. Minn. Aug. 29, 2025);

107. *A.A. v. Olson*, No. 25-3381, 2025 WL 2866729 (D.Minn.);

108. *Herrera Avila v. Bondi*, No. 25-cv-03741 (D. Minn. Oct. 21, 2025);

109. *Garcia Jimenez v. Kramer*, No. 4:25-cv-03162, 2025 WL 2374223 (D. Neb. Aug. 14, 2025);

110. *Carmona-Lorenzo v. Trump*, No. 4:25-cv-03172, 2025 WL 2531521 (D. Neb. Sept. 3, 2025);

111. *Cortes Fernandez v. Lyons*, No. 8:25-cv-00506, 2025 WL 2531539 (D. Neb. Sept. 3, 2025);

112. *Palma Perez v. Berg*, No. 8:25-cv-00494, 2025 WL 2531566 (D. Neb. Sept 3, 2025);

113. *Lorenzo Perez v. Kramer*, No. 4:25-cv-03179, 2025 WL 2624387 (D. Neb. Sept. 11, 2025);

114. *Ozuna Carlon v. Kramer*, No. 4:25-cv-03178, 2025 WL 2624386 (D. Neb. Sept. 11, 2025);

115. *Genchi Palma v. Trump*, No. 4:25-cv-03176, 2025 WL 2624385 (D. Neb. Sept. 11, 2025);

116. *Duenas Arce v. Trump*, No. 8:25-cv-00520, 2025 WL 2675934 (D. Neb. Sept. 18, 2025);

117. *Rosado v. Figueroa*, No. 2:25-cv-02157. 2025 WL 2337099 (D. Ariz. Aug. 11, 2025);

118. *Ortiz Donis v. Chestnut*, No. 1:25-cv-01228, 2025 WL 2879514 (E.D. Cal. Oct. 9, 2025);

119. *J.S.H.M. v. Wofford*, No. 1:25-CV-01309, 2025 WL 2938808 (E.D. Cal. Oct. 16, 2025);

120. *Sabi Polo v. Chestnut*, No. 1:25-cv-01342, 2025 WL 2959346 (E.D. Cal. Oct. 17, 2025);

121. *Menjivar Sanchez v. Wofford*, No. 1:25-cv-1187, 2025 WL 2959274 (C.D. Cal. Oct. 17, 2025);

122. *Hernandez Nieves v. Kaiser*, No. 3:25-cv-06921, 2025 WL 2533110 (N.D. Cal. Sept. 3, 2025);

123. *Caicedo Hinestroza v. Kaiser*, No. 3:25-cv-07559, 2025 WL 2606983 (N.D. Cal. Sept. 9, 2025);

124. *Salcedo Aceros v. Kaiser*, No. 3:25-cv-06924, 2025 WL 2637503 (N.D. Cal. Sept. 12, 2025);

125. *Pablo Sequen v. Kaiser*, No. 25-cv-06487, 2025 WL 2650637 (N.D. Cal. Sept. 16, 2025);

126. *Castellanos v. Kaiser*, No. 25-cv-07962, 2025 WL 2689853 (N.D. Cal. Sept. 18, 2025);

127. *Oliveros v. Kaiser*, No. 25-cv-07117, 2025 WL 2677125 (N.D. Cal. Sept. 18, 2025);

128. *Roa v. Albarran*, No. 25-cv-07802, 2025 WL 2732923 (N.D. Cal. Sept. 25, 2025);

129. *Valencia Zapata v. Kaiser*, No. 25-cv-07492, 2025 WL 2741654 (N.D. Cal. Sept. 26, 2025);

130. *Cordero Pelico v. Kaiser*, No. 25-cv-07286-EMC, 2025 WL 2822876 (N.D. Cal. oct. 3, 2025);

131. *Alvarez Chavez v. Kaiser*, No. 25-cv-06984-LB, 2025 WL 2909526 (N.D. Cal.);

132. *Vasquez Garcia v. Noem*, No. 3:25-cv-02180, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025);

133. *Martinez Lopez v. Noem*, No. 3:25-cv-02734 (S.D. Cal. Oct. 23, 2025) (Minute Entry);

134. *Rico-Tapia v. Smith*, No. 25-cv-379, 2025 WL 2950089 (D. Haw. Oct. 10, 2025);

135. *Carlos v. Noem*, No. 2:25-cv-01900, 2025 WL 2896156 (D. Nev.);

136. *E.C. v. Noem*, No. 2:25-cv-01789. 2025 WL 2916264 (D. Nev.);

137. *Vazquez v. Feeley*, No. 2:25-CV-01542-RFB-EJY, 2025 WL 2676082 (D. Nev. Sept. 17, 2025) (same);

138. *Pena v. Hyde*, No. 25-11983, 2025 WL 2108913 (D. Mass. July 28, 2025) was likewise erroneously concluded. Pena is distinguishable, however, as Pena did not appear to raise § 1226 and instead relied on an approved I-130 petition to support his adjustment of status. Other courts, including the same court from the District

of Massachusetts distinguished Pena, noting the court was focused on other issues and did not analyze the precise question of which statute applied to his detention.

139. *Romero v. Hyde*, No. 1:25-CV-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025),

140. *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *2 (D. Mass. July 7, 2025);

141. *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924, at *7 (D. Mass. Sept. 9, 2025),

142. *dos Santos v. Noem*, 2025 WL 2370988 (D. Mass. Aug. 14, 2025).

143. *Diaz Diaz v. Mattivelo*, 2025 WL 2457610 (D. Mass. Aug. 27, 2025),

144. *Doe v. Moniz*, 2025 WL 2576819 (D. Mass. Sept. 5, 2025),

145. *Romero-Nolasco v. McDonald*, 2025 WL 2778036 (D. Mass. Sep 29, 2025),

146. *Da Silva v. Bondi*, 2025 WL 2969163 (Oct. 21, 2025, D. Mass),

147. *Inlago Tocagon v. Moniz*, 2025 WL 2778023 (D. Mass. Sept. 29, 2025),

148. *Rocha v. Hyde*, 2025 WL 2807692 (D. Mass. Oct. 2, 2025),

149. *Elias Escobar v. Hyde*, 2025 WL 2823324 (D. Mass. Oct. 3, 2025).

150. *Lema Zamora v. Noem*, No. 1:25-12750-NMG, 2025 WL 2958879 (D. Mass Oct. 17, 2025), which addresses this issue directly and concludes that 1226(a) not 1225(b) controls.

151. *Vasquez Garcia v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025).

152. *Aguilar Guerra v. Joyce*, No. 2:25-cv-00534, 2025 WL 2986316 (D. Me. Oct. 24, 2025)

153. *Cesario Souza v. Hyde*, No. 25-CV-12461, 2025 WL 2997670 (D. Mass. Oct. 24, 2025)

154. *Chanaguano Caiza v. Scott*, No. 1:25-CV-00500, 2025 WL 3013081 (D. Me. Oct. 28, 2025)

155. *Tomas Elias v. Hyde*, No. 25-cv-540-JJM-AEM, 2025 WL 3004437 (D.R.I. Oct. 27, 2025)

156. *J.G.O. v. Francis*, No. 1:25-cv-07233, 2025 wl 3040142 (S.D.N.Y. Oct. 28, 2025)

157. *Tumba Huamani v. Francis*, No. 25-cv-8110, 2025 WL 3079014 (S.D.N.Y. Nov. 4, 2025)

158. *Romero Perez v. Francis*, No. 25-cv-8112, 2025 WL 3110459

159. *Alvarez Ortiz v. Freden*, No. 1:25-CV-960, 2025 WL 3085032 (W.D.N.Y. Nov. 4, 2025)

160. *Bethancourt Soto v. Soto*, No. 25-cv-16200, 2025 WL 2976572 (D.N.J. Oct. 22, 2025)

161. *De Fatima Lomeu v. Soto*, No. 25-cv-16589, 2025 WL 2981296 (D.N.J. Oct. 23, 2025)

162. *Lopez Lopez v. Soto*, No. 2:25-cv-16303, 2025 WL 2987485 (D.N.J. Oct. 23, 2025)

163. *Contreras Maldonado v. Cabezas*, No. 2:25-cv-13004, 2025 WL 2985256 (D.N.J. Oct. 23)

164. *Patel v. Almodovar*, No. 2:25-cv-15345, 2025 WL 3012323 (D.N.J. Oct. 28, 2025)

165. *Ayala Amaya v. Bondi*, No. 25-cv-16428, 2025 WL 3033880 (D.N.J. Oct. 30, 2025)

166. *Vargas Ramos v. Rokosky*, No. 25-cv-15892, 2025 WL 3063588 (D.N.J. Nov. 3, 2025)

167. *Cantu-Cortes v. O'Neill*, No. 25-cv-6338, 2025 WL 3171639 (E.D. Pa. Nov. 13, 2025)

168. *Santana-Rivas v. Warden*, No. 3:25-cv-01896, (Nov. 13, 2025) (report and recommendation)

169. *Pineda Velasquez v. Noem*, No. 25-cv-3215, 2025 WL 3003684 (D. Md. Oct. 27, 2025)

170. *Hernandez Hernandez v. Crawford*, No. 1:25-cv-01565-AJT-WBP, 2025 WL 2940702 (E.D. Va. Oct. 16, 2025)

171. *Flores Pineda v. Simon*, No. 1:25-cv-01616, 2025 WL 2980729 (E.D. Va. Oct. 21, 2025)

172. *Yobani v. Noem*, No. 1:25-cv-01666, 2025 WL 2997507 (E.D. Va. Oct. 24, 2025)

173. *Duarte Escobar v. Perry*, No. 25-cv-758, 2025 WL 3006742 (E.D. Va. Oct. 27, 2025)

174. *Boquin Oliva v. Noem*, No. 25-cv-1592, 2025 WL 3145712 (E.D. Va. Oct. 29, 2025)

175. *Sarmiento v. Perry*, No. 1:25-cv-01644, 2025WL 3091140 (E.D. Va. Nov. 5, 2025)

176. *Diaz Garcia v. Noem*, No. 25-cv-1712, (E.D. Va. Nov. 6, 2025)

177. *Ventura Martinez v. Trump*, No. 3:25-cv-01445, (W.D. La. Oct. 22, 2025)

178. *Pineda Parada v. Rice*, No. 1:25-cv-1660, 2025 WL 3146250 (W.D. La. Nov. 4, 2025)

179. *Godinez-Lopez v. Ladwig*, No. 2:25-CV-02962, 2025 WL 3047889 (W.D. Tenn. Oct. 31, 2025)

180. *Hernandez-Alonso v. Tindall*, No. 3:25-CV-652-DJH, 2025 WL 3083920 (W.D. Ky. Nov. 4, 2025)

181. *Gimenez Gonzalez v. Raycroft*, No. 25-CV-13094, 2025 WL 3006185, at *1 (E.D. Mich. Oct. 27, 2025)

182. Hernandez Capote v. Secretary of U.S. DHS, No. 25-cv-13128, 2025 WL 3089756 (E.D. Mich. Nov. 5, 2025)

183. *Morales-Martinez v. ICE*, No. 2:25-cv-13303, 2025 WL 3124695 (E.D. Mich. Nov. 7, 2025)

184. *Mauricio Diego v. Raycraft*, No. 5:25-cv-13288, 2025 WL 3159106 (E.D. Mich. Nov. 12) (Levy)

185. *Rodriguez Carmona v. Noem*, No. 1:25-cv-1131, 2025 WL 2992222 (W.D. Mich. Oct. 24, 2025)

186. *Puerto-Hernandez v. Lynch*, No. 1 :25-CV-1097, 2025 WL 3012033 (W.D. Mich. Oct. 28, 2025)

187. *Cervantes Rodriguez v. Noem*, No. 1:25-CV-1196, 2025 WL 3022212 (W.D. Mich. Oct. 29, 2025)

188. *Marin Garcia v. Noem*, No. 1:25-CV-1271, 2025 WL 3017200 (W.D. Mich. Oct. 29, 2025)

189. *Rodriguez Serrano v . Noem*, No. 25-cv-1320, 2025 WL 3122825 (W.D. Mich. Nov. 7, 2025)

190. *G.Z.T. v. Smith*, No. 1:25-cv-12802 (N.D. Ill. Oct. 21, 2025)

191. *Perez Padilla v. Noem*, No. 25-cv-12462, 2025 WL 2977742 (N.D. Ill. Oct. 22, 2025)

192. *Patel v. Crowley*, No. 25-C-11180, 2025 WL 2996787 (N.D. Ill. Oct. 24, 2025)

193. Maldonado v. Crowley, No. 1:25-cv-12762 (N.D. Ill. Oct. 24, 2025)

194. Amigon Sanchez v. Olson, No. 25-cv-12453, 2025 WL 3004580 (N.D. Ill. Oct. 27, 2025)

195. *Corona Diaz v. Olson*, No. 25-CV-12141, 2025 WL 3022170 (N.D. Ill. Oct. 29, 2025)

196. *Rosales Ponce v. Olson*, No. 25-cv-13037, 2025 WL 3049785 (N.D. Ill. Oct. 31, 2025)

197. *Loza Valencia v. Noem*, No. 25-CV-12829, 2025 WL 3042520 (N.D. Ill. Oct. 31, 2025)

198. *Flores v. Olson*, No. 25-cv-12916, 2025 WL 3063540 (N.D. Ill. Nov. 3, 2025)

199. *D.E.C.T. v. Noem*, No. 25-cv-12463, 2025 WL 3063650 (N.D. Ill. Nov. 3, 2025)

200. *Galvis Cortes v. Olsen*, No. 25-cv-6293, 2025 WL 3063636 (N.D. Ill. Nov. 3, 2025)

201. *Reyes Arizmendi v. Noem*, No. 25-cv-13041, 2025 WL 3089107 (N.D. Ill. Nov. 5, 2025)

202. Guartazaca Sumba v. Noem, No. 1:25-cv-13034, 2025 WL 3126512 (N.D. Ill. Nov. 9, 2025)

203. *Lira Perez v. Noem*, No. 1:25-cv-13442, 2025 WL 3140692 (N.D. Ill. Nov. 10, 2025)

204. *Ramirez Martinez v. Noem*, No. 25-CV-12029, 2025 WL 3145103, at *7 (N.D. Ill. Nov. 11, 2025)

205. *Ramirez Valverde v. Olson*, No. 25-CV-1502, 2025 WL 3022700 (E.D. Wis. Oct. 29, 2025)

206. *Garcia Picazo, v. Sheehan*, No. C25-4057-LTS-MAR, 2025 WL 3006188 (N.D. Iowa Oct. 27, 2025)

207. *Lopez Lopez v. Sheehan*, No. 25-CV-4052-CJW-KEM, 2025 WL 3046183 (N.D. Iowa Oct. 30, 2025)

208. *Ruiz Yarleque v. Noem*, No. 5:25-CV-02836, 2025 WL 3043936 (C.D. Cal. Oct. 31, 2025)

209. *J.A.C.P. v. Wofford*, No. 1:25-CV-01354, 2025 WL 3013328 (E.D. Cal. Oct. 27, 2025)

210. *Lopez v. Lyons*, No. 2:25-cv-03174, 2025 WL 3124116 (E.D. Cal. Nov. 7, 2025)

211. *Perez-Gonzalez v. LaRose*, No. 25-cv-2727, (S.D. Cal. Oct. 30, 2025)

212. *Beltran v. Noem*, No. 5cv2650-LL-DEB, 2025 WL 3078837 (S.D. Cal. Nov. 4, 2025)

213. *Garcia Magadan v. Noem*, No. 3:25-cv-2889, 2025 WL 3090089 (S.D. Cal. Nov. 5, 2025)

214. *Dominguez-Lara v. Noem*, No. 2:25-CV-01553, 2025 WL 2998094 (D. Nev. Oct. 24, 2025)

215. *BAUTISTA-AVALOS v. BERNACKE*, No. 2:25-CV-01987, 2025 WL 3014023 (D. Nev. Oct. 27, 2025)

216. *ARCE-CERVERA v. NOEM*, No. 2:25-CV-01895, 2025 WL 3017866 (D. Nev. Oct. 28, 2025)

217. *Hernandez-Luna v. Noem*, No. 2:25-cv-01818, 2025 WL 3102039 (D. Nev. Nov. 6, 2025)

218. *L.A.E. v. WAMSLEY*, No. 3:25-cv-01975, 2025 WL 3037856 (D. Or. Oct. 30, 2025)

219. *Del Valle Castillo v. Wamsley*, No. 2:25-cv-02054, 2025 WL 3094057 (W.D. Wash. Nov. 5, 2025)

220. *Molina Ochoa v. Noem*, No. 1:25-cv-00881, 2025 WL 3125846 (D.N.M. Nov. 7, 2025)(R&R)

221. *Alvarez Varela v. Dedos*, No. 1:25-cv-01085 (D.N.M. Nov. 11, 2025)

222. *Hinojosa Garcia v. Noem*, No. 2:25-cv-00879, 2025 WL 3041895 (M.D. Fla. Oct. 31, 2025)

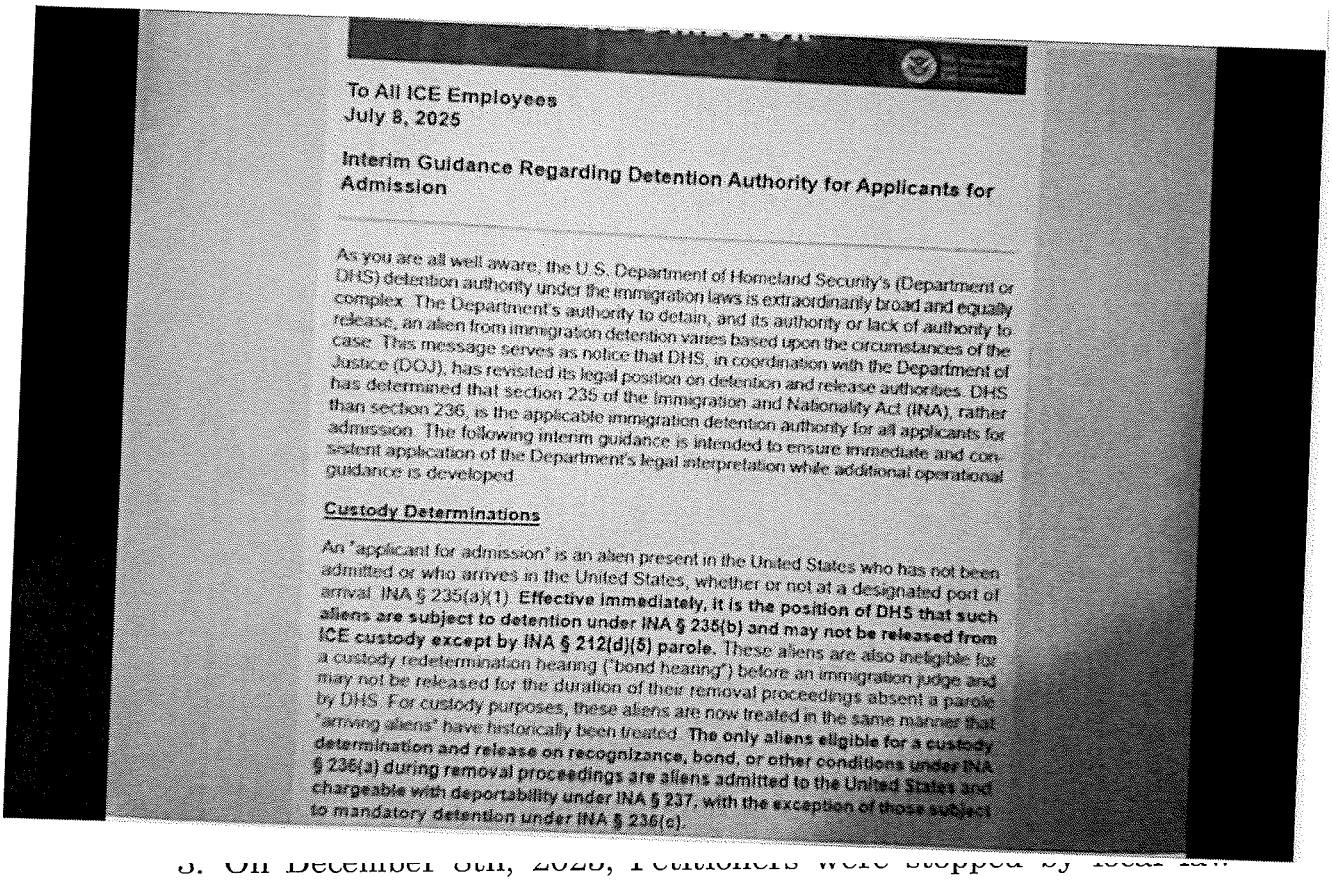
223. *E.L.C. et al. v. Warden*, No. 4:25-cv-288 (cases consolidated), 2025 WL 3158802 (Nov. 4, 2025)

224. *Ortega Jimenez v. Warden*, No. 25-cv-5650, FCI Atlanta (N.D. Ga. Nov. 6, 2025)

225. *R.E. v. Bondi*, No. 0:25-cv-3946,2025 WL 3146312 (D. Minn. Nov. 4, 2025)

Petitioner Zapet's wife, who has provided details about his current location and detention. Petitioner is neither a flight risk nor a danger to the community.

2. Petitioners' continued detention by ICE is unlawful and unconstitutional. The government's recent policy shift—



To All ICE Employees
July 8, 2025

Interim Guidance Regarding Detention Authority for Applicants for Admission

As you are all well aware, the U.S. Department of Homeland Security's (Department or DHS) detention authority under the immigration laws is extraordinarily broad and equally complex. The Department's authority to detain, and its authority or lack of authority to release, an alien from immigration detention varies based upon the circumstances of the case. This message serves as notice that DHS, in coordination with the Department of Justice (DOJ), has revisited its legal position on detention and release authorities. DHS has determined that section 235 of the Immigration and Nationality Act (INA), rather than section 236, is the applicable immigration detention authority for all applicants for admission. The following interim guidance is intended to ensure immediate and consistent application of the Department's legal interpretation while additional operational guidance is developed.

Custody Determinations

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).**

3. On December 8th, 2025, Petitioners were stopped by local law enforcement while driving to work, both of them in the same car, without any observed traffic violation or articulable suspicion of criminal activity. Officers reportedly justified the stop solely on the basis of Petitioners "looking Hispanic." There was no warrant for their arrest no probable cause. Such conduct constitutes an

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.

Because the position that detention is pursuant to INA § 235(b) is likely to be litigated, however, OPLA will need to make alternative arguments in support of continued detention before the Executive Office for Immigration Review. Accordingly, ERO and Homeland Security Investigations (HSI) should continue to develop and obtain evidence, including conviction records, to support OPLA's arguments of dangerousness and flight risk in those bond proceedings.

Re-detention

This interpretation does not impose an affirmative requirement on ICE to immediately identify and arrest all aliens who may be subject to INA § 235 detention. Rather, the custody provisions at INA § 235(b)(1)(B)(ii), (iii)(IV), and (b)(2)(A) are best understood as prohibitions on release once an alien enters ICE custody upon initial arrest or re-detention.

This change in legal interpretation may, however, warrant re-detention of a previously released alien in a given case. Until additional guidance is issued, ERO and HSI should consult with OPLA prior to rearresting an alien on this basis.

Parole Requests by Previously Released Aliens

It is expected that ICE will see an increase in applicants for admission previously released under INA § 236(a) requesting documentation of parole pursuant to INA § 212(d)(5) in order to establish eligibility for certain immigration benefits, including employment authorization and adjustment of status. DHS does not take the position that prior releases of applicants for admission pursuant to INA § 236(a) were releases on parole under INA § 212(d)(5) based on this change in legal position. Accordingly, ERO and HSI are not required to "correct" the release paperwork by issuing INA § 212(d)(5) parole paperwork.

JS 44 (Rev. 03/24)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

NERY VIDAL RAMIREZ ZAPET
Donald Estuardo Bravo Cabrera

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*

Karen Weinstock
1827 Independence Square, Atlanta, GA 30338

DEFENDANTS

Ladeon Francis, Todd Lyons, Kristi Noem, Pamela Bondi.

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question *(U.S. Government Not a Party)*
- ☒ 2 U.S. Government Defendant
- ☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

Click here for: Nature of Suit Code Descriptions.

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☒ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

INTELLECTUAL PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 835 Patent - Abbreviated New Drug Application
- ☐ 840 Trademark
- ☐ 880 Defend Trade Secrets Act of 2016

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC 3729(a))
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit (15 USC 1681 or 1692)
- ☐ 485 Telephone Consumer Protection Act
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District *(specify)* ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
28 U.S.C. § 2241; Art.1, § 9, Cl.2 of the United States Constitution

Brief description of cause:
DHS is detaining Petitioner and depriving Petitioner of liberty without due process of law.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, F.R.Cv.P.

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY *(See instructions)*:

JUDGE _____ DOCKET NUMBER _____

DATE
Dec 11, 2025

SIGNATURE OF ATTORNEY OF RECORD
/s/ Karen Weinstock

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I.(a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.)**

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: Nature of Suit Code Descriptions.

V. Origin. Place an "X" in one of the seven boxes.
Original Proceedings. (1) Cases which originate in the United States district courts.
Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related cases, if any. If there are related cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.