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

ISABELINO COLMENARES-SILVA *Petitioner*, *v.* PAM BONDI, United States Attorney General; KRISTI NOEM, Secretary of the United States Department of Homeland Security; TODD M. LYONS, Director of United States Immigration and Customs Enforcement; MIGUEL VERGARA, Field Office Director for Detention and Removal, U.S. Immigration and Customs Enforcement; BOBBY THOMPSON, Warden, South Texas ICE Processing Center *Respondents*.	Civ. No. 5:25-cv-0173 DHS File Number: A# [redacted] **PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241**

INTRODUCTION

Petitioner, Isabelino Colmenares-Silva, is in the physical custody of Respondents at the South Texas ICE Processing Center. He now faces unlawful detention because the Department of Homeland Security (DHS) and the Executive Office of Immigration Review (EOIR) have concluded Petitioner is subject to mandatory detention.

Petitioner is charged with, inter alia, having entered the United States without admission or inspection. See 8 U.S.C. § 1182(a)(6)(A)Ci).

Based on this allegation in Petitioner's removal proceedings, DHS re-detained Petitioner when he presented himself at a scheduled check-in placing him in immigration custody which is consistent with a new DHS policy issued on July 8, 2025, instructing all Immigration and Customs Enforcement (ICE) employees to consider anyone inadmissible under § 1182(a)(6)(A)()—i.e., those who entered the United States without admission or inspection—to be subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.

Similarly, on September 5, 2025, the Board of Immigration Appeals (BIA or Board) issued a precedent decision, binding on all immigration judges, holding that an immigration judge has no authority to consider bond requests for any person who entered the United States without admission. *See Matter of Yajure Hurtado*, 29 1. & N. Dec. 216 (BIA 2025). The Board determined that such individuals are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.

Because of the BIA's decision, no Immigration Judge has jurisdiction to even consider a bond. Petitioner challenges his detention on the basis that it violates the plain language of the

Immigration and Nationality Act (INA), §1225(b)(2)(A) does not apply to individuals like Petitioner who previously entered and are now residing in the United States. Instead, such individuals are subject to a different detention statute, §1226(a), that allows for release on conditional parole or bond. That statute expressly applies to people who, like Petitioner, are charged as inadmissible for having entered the United States without inspection.

Respondents' new legal interpretation is plainly contrary to the statutory framework and to decades of agency practice applying §1226(a) to people like Petitioner.

Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be released.

CUSTODY

1. Petitioner is in the physical custody of Defendant-Respondent MIGUEL VERGARA, Field Office Director for Detention and Removal, U.S. Immigration and Customs Enforcement ("ICE"), DHS, and Respondent BOBBY THOMPSON, the Warden of the South Texas Immigration Processing Center in Frio County. At the time of the filing of this petition, Plaintiff-Petitioner is detained at the South Texas Immigration Processing Center in Pearsall, Texas. The Geo Group contracts with the DHS to detain noncitizens such as Plaintiff-Petitioner. Plaintiff-Petitioner is under the direct control of Defendants-Respondents and their agents.

JURISDICTION AND VENUE

2. This Court has subject-matter jurisdiction over this case under 28 U.S.C. § 1331 and 5 U.S.C. § 702 as Plaintiff-Petitioner suffered a legal wrong from agency action. The Court

also has jurisdiction over this petition under 28 U.S.C. §§ 2241(c)(1) and (c)(3), Art. I, § 9, Cl. 2 of the United States Constitution ("Suspension Clause"). This Court has further remedial authority pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 et. seq.

3. Venue properly lies within the Western District of Texas because all of the events or omissions giving rise to this action occurred in the district. 28 U.S.C. § 1391(b).

4. No petition for habeas corpus has previously been filed in any court to review Plaintiff-Petitioner's case.

PARTIES

5. The Petitioner is a national and citizen of Venezuela. He is currently detained at the South Texas ICE Processing Center located in Pearsall, Texas.

6. Defendant-Respondent PAMELA JO BONDI is the Attorney General of the United States and the most senior official in the United States Department of Justice ("DOJ"). She has the authority to interpret immigration laws and adjudicate removal cases. 8 U.S.C. § 1103(g). The Attorney General delegates this responsibility to the Executive Office for Immigration Review ("EOIR"), which administrates the immigration courts and the Board of Immigration Appeals ("BIA" or "Board"), Defendant-Respondent is named in her official capacity. Respondent's address is 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530.

7. Defendant-Respondent KRISTI LYNN NOEM is the Secretary of the U.S. Department of Homeland Security ("DHS"), an agency of the United States. Defendant-Respondent is responsible for the administration of immigration laws pursuant to 8 U.S.C. §1103(a). The

Secretary is a legal custodian of the Plaintiff Petitioner. Defendant-Respondent is named in her official capacity. Her address is Department of Homeland Security, Washington, D.C.20528.

8. Defendant-Respondent TODD M. LYONS is the acting Director of the ICE within DHS, a sub-agency of the DHS. He is responsible for the administration and enforcement of immigration laws. He is named in her official capacity, and her address is 500 12th Street SW, Mail Stop 5900 Washington, D.C. 20536.

9. Defendant-Respondent MIGUEL VERGARA is the Field Office Director for Detention and Removal, ICE, DHS. He is a custodial official acting within the boundaries of the judicial district of the United States Court for the Western District of Texas. Pursuant to Defendant-Respondent's orders, Plaintiff-Petitioner remains detained. Defendant Respondent is sued in her official capacity. His address is 1777 NE Loop 410 Floor 15, San Antonio, Texas, 78217.

10. Respondent Bobby Thompson is the Warden of the South Texas ICE Processing Center in Pearsall, Texas, and he has immediate physical custody of Petitioner pursuant to the facility's contract with U.S. Immigration and Customs Enforcement to detain noncitizens. Respondent Thompson is a legal custodian of Petitioner. He is being sued in his legal capacity as the Warden of the South Texas Immigration Processing Center in Pearsall, Texas.

FACTS

11. On or about October 26, 2021, Mr. Colmenares-Silva, a citizen of Venezuela, arrived in the United States without being admitted or paroled. Exh. A. He was accompanied by his spouse and daughter, who are also a citizens of Venezuela.

12. Following their entry into the United States, DHS arrested the family near Eagle Pass, TX. The immigration officer executed the arrest under 8 U.S.C. § 1226(a).

13. On October 28, 2021, DHS issued the Petitioner a Notice to Appear (NTA) requiring him to make an appearance at an immigration court for his initial hearing in San Antonio, TX but it failed to contain a specific date and time. *See* Exh. A. According to the NTA, Mr. Colmenares-Silva was placed in removal proceedings under section 240 of the Immigration and Nationality Act (INA), 8 U.S.C. § 1229a.

14. Subsequently, DHS released the Petitioner and his spouse on their own recognizance the following day. The order of release states that ***"[i]n accordance with section 236 of the Immigration and Nationality Act*** and the applicable provisions of Title 8 of the Code of Federal Regulations, you are being released on your own recognizance provided you comply with the following conditions...." Exh. B (emphasis added).

15. Following his release, Mr. Colmenares-Silva received a letter from the EOIR indicating that he was to appear before the immigration court for his first hearing on October 19, 2022.

16. At the hearing, Mr. Colmenares-Silva, through counsel, objected to the Notice to Appear because it violated INA § 239(a)(1) which is a mandatory claim-processing rule requiring the NTA to designate a specific date and time for the initial immigration court hearing. If

the NTA is missing the date and time, it is considered defective. *Matter of Fernandez*, 28 I&N Dec. 605 (BIA 2022).[1]

17. The Immigration Judge terminated the removal proceedings without prejudice, and the Government reserved appeal. An appeal was filed within the required time of 30 days. Exh. C.

18. On November 13, 2025, Mr. Colmenares-Silva attended his regularly scheduled check-in, where ICE detained the Petitioner. No reason was given for his sudden detention.

19. On the same day, the BIA issued its decision in the Petitioner's case, and reinstated removal proceedings, finding that its recent decision in *Matter of R-T-P-*, 28 I&N Dec. 828 (BIA 2024) allowed the immigration judge to amend the NTA by DHS motion. Exh. D.

20. It took the BIA three years to issue its decision in the Petitioner's case.

21. Since his detention at the South Texas Center, the Petitioner has had limited contact with his family and has been unable to work. He has been unable to provide for his family.

22. The Petitioner has already been set for a final hearing, but no date has been scheduled. Petitioner expects the hearing to be scheduled promptly with little time given to prepare his asylum case.

23. Petitioner's asylum application was filed on December 10, 2025. Prior to his detention, Mr. Colmenares-Silva had Temporary Protected Status. Exh. E.

24. As of November 13, 2025, the Petitioner has remained detained.

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[1] The Supreme Court clarified that INA § 239 a Notice to Appear is a single document required to contain the time and date removal proceedings will be held. *Niz-Chavez v Garland*, 141 S. Ct. 1474 (2021). Furthermore, in *Rodriguez v. Garland*, 15 F. 4th 351, 355 (5th Circuit 2021), subsequent notices do not cure the defect in the NTA.

LEGAL FRAMEWORK

25. The Fifth Amendment's Due Process Clause applies to "all persons" within the United States, including noncitizens. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." *Id.* at 690. In the immigration context, detention is constitutionally justified only to prevent flight or protect the community. *Demore v. Kim*, 538 U.S. 510, 528 (2003).

26. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally entitled to a bond hearing before an immigration judge at the outset of their detention to review ICE custody determinations, see 8 C.F.R. §§ 1003.19(a), 1236.1(d). These bond hearings are separate and apart, and form no part of, the removal proceedings themselves. A statutory exception to this eligibility for an immigration judge bond hearing exists for noncitizens who have been arrested, charged with, or convicted of certain crimes, for whom detention is generally mandatory under 8 U.S.C. § 1226(c).

27. Second, the INA provides for so-called "mandatory" detention of recently arriving noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1), and for other recent arrivals seeking admission under § 1225(b)(2).[2]

[2] Although the term "mandatory detention" is often used to describe detention under 8 U.S.C. § 1225(b), the term is a misnomer because, as courts have acknowledged, DHS agencies may release such individuals

28. Last, the INA also provides for detention of noncitizens who have been ordered removed, including individuals in "withholding-only" proceedings (proceedings to determine whether removal to a particular country should be withheld due to a likelihood of persecution), *see* 8 U.S.C. § 1231(a)-(b).

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

30. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IRIRA) 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).

31. 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)("Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond.")(parenthetical in original).

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through parole for "urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A); 8 C.F.R. § 212.5; see Flores v. Barr, 934 F.3d 910, 917 (9th Cir. 2019) ("The INA provides that, even for noncitizens in expedited removal, 'the Attorney General may ... in her discretion parole into the United States temporarily' any noncitizen applying for admission 'under such conditions as he may prescribe.'"). Thus, it is more accurate to say individuals detained under8 U.S.C. § 1225(b) are detained without statutory eligibility for a bond hearing.

32. 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)).

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

34. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission,"[3] claims that all persons who entered the United States without inspection shall now be subject to the detention provision under § 1225(b)(2)(A) and thus ineligible for release on bond. The policy applies regardless of when a person is apprehended by DHS and affects those who have resided in the United States for months, years, and even decades.

35. On September 5, 2025, the BIA adopted this same position in a published decision, *Matter of Yajure Hurtado.* There, the Board held that all noncitizens who entered the United States without admission or parole are subject to detention under § 1225(b)(2)(A) and are ineligible for IJ bond hearings.

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[3] *Available at* https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission

36. 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.

37. Even before ICE or the BIA introduced these nationwide policies, immigration judges in the Tacoma, Washington, immigration court stopped providing bond hearings for persons who entered the United States without inspection and who have since resided here. There, the U.S. District Court in the Western District of Washington found that such a reading of the INA is likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. *Rodriguez Vazquez* v. *Bostock, 779* F. Supp. 3d 1239 (W.D. Wash. 2025).

38. Subsequently, court after court has adopted the same reading of the INA's detention authorities and rejected ICE and EOIR's new interpretation. *See, e.g.,Kostakv. Trump,* No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Gomes* v. *Hyde,* No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez* v. *Hyde,* No. CV 25-11613-BEM, — F. Supp. 3d — 2025 WL 2084238 (D. Mass. July 24, 2025); *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); *Lopez Benitez* v. *Francis,* No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *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); *Romero* v. *Hyde,* No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb* v. *Joyce,* No. 25 CIV. 6373

(DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo* v. *Kaiser,* No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal, Aug. 21,2025); *Leal-Hernandez* v. *Noem,* No. 1:25-cv-02428- JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *JoseJ.O.E. v. Bondi,* No. 25-CV-3051 (ECT/DJF), — F. Supp. 3d — 2025 WL 2466670 (D. Minn. Aug. 27, 2025) *Lopez-Campos* v. *Raycraft,* No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez Garcia* v. *Noem,* No. 25-cv-02I80-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda* v. *Noem,* No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Pizarro Reyes* v. *Raycraft,* No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao* v. *Hyde,* No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *see also, e.g., Palma Perez* v. *Berg,* No. 8:25CV494, 2025 WL 2531566, at *2 (D. Neb. Sept. 3,2025) (noting that "[t]he Court tends to agree" that § 1226(a) and not §1225(b)(2) authorizes detention); *Jacinto* v. *Trump,* No. 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 at *3 (D. Neb. Aug. 19, 2025) (same); *Anicasio* v. *Kramer,* No. 4:25-cv-03158-JFB-RCC, 2025 WL 2374224 at *2 (D. Neb. Aug. 14, 2025) (same).

39. Courts have uniformly rejected DHS's and EOIR's new interpretation because it defies the INA. As the *Rodriguez Vazquez* court and others have explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

40. Section 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." These removal hearings are held under § 1229a, to "decid[e] the inadmissibility or deportability of a[] [noncitizen]."

41. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a). As the *Rodriguez Vazquez* court explained, "[w]hen Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies." *Rodriguez Vazquez, 119* F. Supp. 3d at 1257 (citing *Shady Grove Orthopedic Assocs., P.A.* v. *Allstate Ins. Co.,* 559 U.S. 393, 400 (2010)); *see also Gomes,* 2025 WL 1869299, at *7.

42. Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole.

43. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. The statute's entire framework is premised on inspections at the border of people who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A). Indeed, the Supreme Court has explained that section 1225(b)'s mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible." *Jennings* v. *Rodriguez,* 583 U.S. 281,287 (2018).

44. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like Petitioner, who have already entered and were residing in the United States at the time they were apprehended.

CLAIMS FOR RELIEF
FIRST CAUSE OF ACTION
Violation of the Due Process Clause
of the Fifth Amendment of the United States Constitution

45. Petitioner repeats and incorporates by reference all allegations above as though set forth fully herein.

46. The Due Process Clause asks whether the government's deprivation of a person's life, liberty, or property is justified by a sufficient purpose. Here, there is no question that the government has deprived Petitioner of her liberty.

47. Mr. Colmenares-Silva's continued detention violates his right to substantive and procedural due process guaranteed by the Fifth Amendment to the U.S. Constitution.

48. The Due Process Clause of the Fifth Amendment to the U.S. Constitution provides that "[n]o person shall...be deprived of life, liberty, or property without due process of law." As a noncitizen who shows well over "two years" physical presence in the United States (indeed he has four years), Mr. Colmenares-Silva is entitled to Due Process Clause protections against deprivation of liberty and property. *See Zadvydas*, 533 U.S. at 693 ("[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent."). Any deprivation of this fundamental liberty interest must be accompanied not only by adequate procedural protections, but also by a "sufficiently strong special justification" to outweigh the significant deprivation of liberty. *Id*. at 690.

49. Respondents have deprived Mr. Colmenares-Silva of his liberty interest protected by the Fifth Amendment by detaining him since November 13, 2025.

50. Mr. Colmenares-Silva's detention is improper because he has been deprived of a bond hearing. A hearing is if anything a right to be heard, and here he has been barred from even filing for bond, without considering the law or entertaining his counsel's arguments. Like the accused in criminal cases, habeas is proper. *See Moore v. Dempsey*, 261 U.S. 86 (1923); *Johnson v. Zerbst*, 304 U.S. 458 (1938); *Burns v. Wilson,* 346 U.S. 137, 154 (1953).

51. Respondents' actions in detaining the Petitioner without any legal justification violate the Fifth Amendment.

52. The government's detention of Petitioner is unjustified. Respondents have not demonstrated that Petitioner needs to be detained. *See Zadvydas*, 533 U.S. at 690 (finding immigration detention must further the twin goals of (1) ensuring the noncitizen's appearance during removal proceedings and (2) preventing danger to the community). There is no credible argument that Petitioner cannot be safely released back to his community and family.

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

SECOND CAUSE OF ACTION
Violation of Immigration and Nationality Act

54. Petitioner re-alleges and incorporates by reference the paragraphs above.

55. Petitioner was detained pursuant to "authority contained in section 236" of the INA; section 236 is codified at 8 U.S.C. § 1226. Despite this, DHS finds that he is detained subject to 8 U.S.C. § 1225(b)(2) and the IJ lacks jurisdiction under *Matter of Yajure Hurtado* on the same basis.

56. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. Mandatory detention does not apply to those who previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a) and are eligible for release on bond, unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

57. Respondents have wrongfully adopted a policy and practice of arguing all noncitizens, such as Petitioner, are subject to mandatory detention under § 1225(b)(2).

58. The unlawful application of § 1225(b)(2) to Petitioner violates the INA.

THIRD CAUSE OF ACTION
Fifth Amendment – Due Process
Denial of Opportunity to Contest Mis-Inclusion in Mandatory Category of Detention

59. Petitioner re-alleges and incorporates by reference the paragraphs above.

60. Mr. Colmenares-Silva has a vested liberty interest in preventing his removal because he is eligible for asylum and is entitled to pursue that relief outside of detention by showing he is neither a danger to the community nor a flight risk under 8 U.S.C. §1226(a).

61. For all of the above reasons, Respondents' attempts to detain Petitioner without a meaningful opportunity to be heard violate his Procedural Due Process rights under the Fifth Amendment.

FOURTH CAUSE OF ACTION
ADMINISTRATIVE PROCEDURE ACT

62. Petitioner re-alleges and incorporates by reference the paragraphs above.

63. Respondents' continued efforts to deny him bond violate the INA, Administrative Procedures Act (APA), and the U.S. Constitution.

64. As set forth in Count Two and Three, federal regulations and case law provide the procedure for a respondent in removal proceedings like him to seek a bond redetermination by an IJ.

65. In being denied the opportunity to return to his family and pursue asylum in a non-detained court setting where he is free to gather the necessary evidence, Mr. Colmenares-Silva would be deprived of the right to freedom to lawfully pursue his rights in his civil matter. The Government's "no-review" provisions are a violation of his procedural and substantive due process and without any statutory authority. There is no time-frame or procedure for requesting DHS to itself review its custody decision, and removal proceedings in this case will proceed during that time while Petitioner remains in custody.

66. The actions by Respondents would improperly alter the substantive rules concerning mandatory custody status without the required notice-and-comment period and would be in violation of the INA and its regulations. These actions by Respondents violate the APA. Under the APA, this Court may hold unlawful and set aside an agency action which is "contrary to constitutional right, power, privilege or immunity." 5 U.S.C. § 706(2)(B). The regulations at 8 C.F.R. §§ 1003.19(h)(1)(B) and 1003.19(h)(2)(B) providing no review of DHS custody decision for arriving aliens in removal proceedings are in violation of substantive and procedural due process as guaranteed by the Fifth Amendment to the United States Constitution. It is ultra vires because it exceeds the authority granted ICE by Congress at 8 U.S.C. § 1226(a). For these reasons, this Honorable Court should hold that

Petitioner is detained under § 236(a), not § 235(b), and order his immediate release or, in the alternative, direct the Immigration Court to conduct a custody redetermination hearing under § 236(a) in which Petitioner has a meaningful opportunity to show that he is not a danger or flight risk. Any contrary reliance on *Matter of Yajure-Hurtado* would unlawfully misapply the statute and deprive Petitioner of his rights under the INA, the APA, and the Due Process Clause.

FIFTH CAUSE OF ACTION
STAY OF REMOVAL CLAIM

67. Petitioner re-alleges and incorporates by reference the paragraphs above.

68. The denial of a bond hearing, followed by removal of Mr. Colmenares-Silva from the United States would cause him irreversible harm and injury because he is mis-classified by the Government as subject to mandatory detention.

69. The Court should grant the stay of Mr. Colmenares-Silva' removal to protect his statutory rights under the INA and the APA. In attempting to assert his rights, the Government has railroaded him and deprived him of freedom and liberty to contest his removal while free on bond, or at the very least, of his ability to prove he is not subject to mandatory detention and that he merits release on bond.

SIXTH CAUSE OF ACTION
SUSPENSION CLAUSE CLAIM

70. Petitioner re-alleges and incorporates by reference the paragraphs above.

71. If 8 U.S.C. § 1252 stripped the Court jurisdiction from this matter, it would be unconstitutional as applied because it would deny Mr. Colmenares-Silva the opportunity for meaningful review of the unlawfulness of his detention and removal.

72. To invoke the Suspension Clause, a petitioner must satisfy a three-factor test: "(1) the citizenship and status of the detainee and the adequacy of the process through which that status determination was made; (2) the nature of the sites where apprehension and then detention took place; and (3) the practical obstacles inherent in resolving the prisoner's entitlement to the writ." *Boumediene v. Bush*, 553 U.S. 723, 766 (2008). Mr. Colmenares-Silva satisfies these three requirements and may invoke the Suspension Clause.

73. First, although Mr. Colmenares-Silva is not a U.S. citizen or resident, he has lived here for over four years, and he qualifies for asylum, because he is from Venezuela, a country currently under a political repressive dictatorship that has persecuted him and his family. Mr. Colmenares-Silva has significant connections to family, friends and colleagues from his home country in the United States. All of which establishes a substantial legal relationship with the United States.

74. Mr. Colmenares-Silva satisfies the second factor because he was apprehended by DHS and remains detained in the United States.

75. Finally, there are no serious, practical obstacles to resolving this present matter. This Court is equipped to decide whether Mr. Colmenares-Silva is entitled to the writ.

76. There is no adequate alternative to a habeas petition. The refusal of the immigration court to even entertain a bond demonstrates he is mis-classified and that he is not subject to mandatory detention, without proper notice or due process, and deprives him of his constitutional rights. The BIA cannot adequately and expeditiously review these issues.

SEVENTH CAUSE OF ACTION
INJUNCTIVE RELIEF

77. Petitioner re-alleges and incorporates herein by reference each and every allegation contained in the above paragraphs of this Petition.

78. This Court has the discretion to enter a temporary restraining order and a preliminary injunction. *See Haitian Refugee Center v. Nelson*, 872 F.2d 1555, 1561-1562 (11th Cir. 1989). "To be entitled to a preliminary injunction, the applicants must show (1) a substantial likelihood that they will prevail on the merits, (2) a substantial threat that they will suffer irreparable injury if the injunction is not granted, (3) their substantial injury outweighs the threatened harm to the party whom they seek to enjoin, and (4) granting the preliminary injunction will not disserve the public interest." *Tex. Med. Providers Performing Abortion Servs. v. Lakey*, 667 F.3d 570, 574 (5th Cir. 2012). All four elements must be demonstrated to obtain injunctive relief. *Id.*

79. Respondents' actions have caused Petitioner harm that warrants immediate relief.

RELIEF SOUGHT

WHEREFORE, Petitioner respectfully requests that this Court:

1) Assume jurisdiction over this matter;

2) Declare that ICE's August 25, 2025, apprehension and detention of Mr. Colmenares-Silva was an unlawful exercise of authority because the ICE officer provided no reason that she presents a danger to the community or is flight risk;

3) Issue an order directing Respondents to show cause why the writ should not be granted;

4) Order Respondents to file with the Court a complete copy of the administrative file from the Department of Justice and the Department of Homeland Security;

5) Enjoin ICE from transferring Mr. Colmenares-Silva outside of the Western District of Texas while this matter is pending;

6) Grant the writ of habeas corpus ordering Respondents to release Mr. Colmenares-Silva on his own recognizance, parole, or reasonable conditions of supervision, or order the Respondents to conduct a bond hearing under which it correctly applies the statutes and no longer mis-classifies him as subject to mandatory detention, in the alternative order a hearing under *Matter of Joseph.*

7) Award Petitioner reasonable costs and attorney's fees under the Equal Access to Justice Act ("EAJA"), as amended, pursuant to 28 U.S.C. § 2412.; and,

8) Grant any other relief that this Court deems just and proper.

PRAYER FOR EXPEDITED CONSIDERATION

Pursuant to 28 U.S.C. § 2243, Petitioner respectfully requests expedited consideration. Each day of unlawful detention inflicts irreparable physical and emotional harm on Petitioner and his family. Prompt judicial intervention is necessary to protect Petitioner's constitutional rights and his well-being.

Dated: December 14, 2025

Respectfully submitted,

/s/ Yasmin E. Voglewede
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VERIFICATION OF COUNSEL

I represent Petitioner, Mr. Isabelino Colmenares-Silva, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: December 14, 2025

/s/ Yasmin E. Voglewede
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