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

Luis Richard Granados Cabarico, Petitioner, Kristi Noem, Secretary of Homeland Security; Pamela Bondi, U.S. Attorney General, Todd M. Lyons, Acting Director of Immigration and Customs Enforcement; Miguel Vergara San Antonio Field Office Director; Bobby Thompson, Warden of the South Texas ICE Processing Center Respondents.	**Civil Case No. 5:25-cv-1742**

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

I. INTRODUCTION

1. For nearly thirty years immigration judges (IJ), immigration lawyers for noncitizens, and attorneys from the Department of Homeland Security (DHS) construed 8 U.S.C. § 1226(a) to allow for bond eligibility for noncitizens who entered the country without inspection. This was well-settled law. Indeed, just this year when Congress passed the Laken Riley Act (LRA) it revealed its understanding that noncitizens who entered the country without inspection are eligible for a bond. The LRA's amendments to 8 U.S.C. § 1226(c) add provisions providing that noncitizens who entered the country illegally and commit certain enumerated offenses are not eligible for a bond. Congress would not have passed the LRA if it understood that noncitizens who entered the country unlawfully were already subject to mandatory detention under 8 U.S.C. § 1225.

2. Despite the clear text of §§ 1226 and 1225, Respondents are construing the detention statutes to impose mandatory detention under § 1225(b) on individuals who entered the United States without inspection, even when apprehended within the interior of the United States years

after their completed entry. *See, e.g.*, *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). The majority of district courts across the nation have rejected the Respondents' erroneous interpretation of the detention statutes. *See, e.g.*, *Chogllo Chafla v. Scott*, No. 2:25-cv-00437-SDN, 2025 WL 2688541, at *5 (D. Me. Sep. 21, 2025) ("[N]early all district courts that have considered this issue have, after conducting persuasive, well-reasoned analyses of the statutory language and legislative history, rejected the Government's broad interpretation of section 1225(b)(2).") (collecting cases); *Belsai D.S. v. Bondi*, No. 25-cv-03682 (KMM/EMB), 2025 WL 2802947 (D. Minn. Oct. 1, 2025) (joining the "chorus" of courts concluding that § 1226 applies) (collecting cases); *Buenrostro-Mendez v. Bondi*, No. CV H-25-3726, 2025 WL 2886346 (S.D. Tex. Oct. 7, 2025) ("As almost every district court to consider this issue has concluded, "the statutory text, the statute's history, Congressional intent, and § 1226(a)'s application for the past three decades" support finding that § 1226 applies to these circumstances."); *J.E.H.G., v. Chesnut et al*, No. 1:25-CV-01673-JLT SKO, 2025 WL 3523108 (E.D. Cal. Dec. 9, 2025) ("Thus, because Petitioner has been present in the United States for approximately three years and was released on her own recognizance by ICE before Respondents adopted the new interpretation of the governing statutes, the Court concludes that the government's recent interpretation of the relationship between § 1225 and § 1226 . . . does not apply here such that detention is not "mandatory" in this case.").

3. The Petitioner entered the United States on or around December 2, 2023 without inspection. He was apprehended by U.S. immigration officials after his entry and ordered to appear before an Immigration Judge (IJ). *See* Exh. A. (Notice to Appear). On December 4, 2023, the U.S. Department of Homeland Security (DHS) released the Petitioner from custody pursuant to Form I-200A, Order of Release on Recognizance, which provided 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," Petitioner was being released on his "own recognizance." *See* Exh. B. In doing so, DHS determined that the Petitioner posed no danger or flight risk and that pursuing his removal was not a priority. *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), aff'd sub nom. *Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018) ("Release reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk."). Petitioner has been residing in the United States since his release from immigration custody with his family.

4. On or around November 8, 2025, Petitioner was re-detained by U.S. immigration officials while reporting on a routine U.S. Immigration and Customs Enforcement (ICE) check-in. This sudden deprivation of liberty was done without a material change in circumstances that would render the Petitioner a danger or a flight risk. Petitioner is now held without bond, in flagrant violation of statutory and constitutional due process protections.

5. The Petitioner accordingly files this petition seeking a writ of habeas corpus ordering his release from custody immediately. *See, e.g.*, *Tinoco Pineda v. Noem*, No. SA-25-CA-01518-XR, 2025 WL 3471418 (W.D. Tex. Dec. 2, 2025) (ordering the Petitioner's immediate release); *Y.M.M. v. Wamsley*, No. 2:25-CV-02075, 2025 WL 3101782 (W.D. Wash. Nov. 6, 2025) (same); *Sanchez v. LaRose*, No. 25-CV-2396-JES-MMP, 2025 WL 2770629 (S.D. Cal. Sept. 26, 2025) (same). In the alternative, Petitioner requests that the Court order the Respondents to provide him a bond hearing under 8 U.S.C. § 1226(a) within five days of this Court's order, at which the U.S. Department of Homeland Security (DHS) bears the burden to justify his redetention by demonstrating, by clear and convincing evidence, materially changed circumstances rendering Petitioner a danger to the community or a flight risk. *See, e.g.*, *Salazar v. Dedos*, No. 1:25-CV-00835-DHU-JMR, 2025 WL 2676729, at *7 (D.N.M. Sept. 17, 2025); *Erazo Rojas v. Noem et al.*,

No. EP-25-CV-443-KC, 2025 WL 3038262, at *4 (W.D. Tex. Oct. 30, 2025) (same) (holding that "when ordering a bond hearing as a habeas remedy" the burden shifts to the Government); *Espinoza v. Kaiser*, No. 1:25-CV-01101 JLT SKO, 2025 WL 2581185 (E.D. Cal. Sept. 5, 2025) ("Since it is the government that initiated redetention, it follows that the government should be required to bear the burden of providing a justification for the redetention.").

II. PARTIES

6. Petitioner Luis Richard Granados Cabarico is a noncitizen who is currently detained in immigration detention at the South Texas ICE Processing Center in Pearsall, Texas.

7. Respondent Kristi Noem is the Secretary of the Department of Homeland Security (DHS) and is charged with implementing the immigration laws of the United States. Secretary Noem is being sued in her official capacity.

8. Respondent Pamela Bondi is the Attorney General for the United States and is charged with overseeing the Executive Office of Immigration Review (EOIR). General Bondi is being sued in her official capacity.

9. Respondent Todd M. Lyons is the Acting Director of the Immigration and Customs Enforcement (ICE), a sub-agency of Homeland Security. It is under ICE's authority that the Petitioner is being held without bond. Acting Director Lyons is being sued in his official capacity.

10. Respondent Miguel Vergara is the Field Office Director for the ICE Enforcement and Removal Operations (ERO) San Antonio Field Office. It is under Respondent Vergara's order that the Petitioner is in immigration custody. Respondent Vergara is being sued in his official capacity.

11. Respondent Bobby Thompson is the Warden and/or immediate custodian at the South Texas ICE Processing Center. Respondent Thompson is being sued in his official capacity.

III. JURISDICTION

12. This Court has subject matter jurisdiction over Petitioner's petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. The Court also has jurisdiction pursuant to 28 U.S.C. § 1331 (Federal Question Jurisdiction) inasmuch as the case is a civil action arising under the laws of the United States.

13. Although only the Court of Appeals has jurisdiction to review removal orders directly through a petition for review, *see* 8 U.S.C. §§ 1252(a)(l), (a)(5), (b), District Courts have jurisdiction to hear habeas corpus claims by noncitizens challenging the lawfulness or constitutionality of their detention by ICE. *See, e.g.*, *Jennings v. Rodriguez*, 583 U.S. 281, 292-96 (2018); *Demore v. Hyung Joon Kim*, 538 U.S. 510, 516-17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687-88 (2001).

14. Venue is proper in this district because the Petitioner is detained within this district, and a substantial amount of the events giving rise to this claim occurred within this district. 28 U.S.C. § 1391(e)(1).

IV. LEGAL FRAMEWORK REGARDING MANDATORY IMMIGRATION DETENTION AND BOND ELIGIBILITY

A. Congress deliberately provided for immigration detention in two different statutes, 8 U.S.C. § 1226 and 8 U.S.C. § 1225, to address two very different groups of noncitizens in different circumstances.

15. This case involves the interplay between 8 U.S.C. § 1226 (general custody for individuals in traditional removal proceedings before an IJ) and the mandatory custody provisions of 8 U.S.C. § 1225(b) that apply to those noncitizens seeking admission at the port of entry or the border. Detention under § 1225(b) may be pursuant to subsection (b)(1) or (b)(2). The Respondents' authority to detain noncitizens under §§ 1226 or 1225 depends on the individualized circumstances of the noncitizen and the procedural posture of the removal case.

16. Both §§ 1226(a) and 1225(b) were enacted and substantially amended, respectively, as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996 to provide detention for different subsets of noncitizens. Pub. L. No. 104-208, Div. C, §§ 302-03, 110 Stat. 3009-546, 3009-582 to 3009-583, 3009-585.

17. Prio to IIRIRA, deportation proceedings was governed by 8 U.S.C. § 1252(a)(1) (1994), which provided that "Pending a determination of deportability ... any [noncitizen] ... may, upon warrant of the Attorney General, be arrested and taken into custody." Like 1226(a), this provision authorized discretionary release on bond pending a determination of deportability. *See* § 1252(a)(1) (1994). According to the IIRIRA's legislative history, § 1226(a) was intended to "restate[] the [then-] current provisions of section [1252](a)(1) regarding the authority of the Attorney General to arrest, detain, and release *on bond* an alien who is not lawfully in the United States." *See Rodriguez v Bostock*, 779 F. Supp. 3d 1239, 1260 (W.D. Wash. Sep. 30, 2025) (quoting H.R. Rep. No. 104-469, at 229 (1996) (emphasis added)).

18. In 1997, following the enactment of the IIRIRA, the Executive Office for Immigration Review (EOIR) drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a) "and eligible for bond and bond redetermination." *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).

19. Thus, in the decades that followed, most people who entered without inspection and were placed in standard removal proceedings received bond hearings under § 1226(a). 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. Rept. No. 104-469, Part 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

i. The Petitioner is in custody under 8 U.S.C. § 1226 and the IJ can order his release on bond.

20. Section 1226(a) "authorizes the Government to detain certain aliens *already in the country* pending outcome of removal proceedings." *Jennings*, 583 U.S. at 289 (emphasis added). In December 2023, Petitioner was arrested pursuant to 8 U.S.C. § 1226(a), released on an Order of Recognizance pursuant to that same authority, and served with an NTA to commence removal proceedings under §1229a. *See* Exh. A. Nearly two years later, while residing in the United States, ICE redetained the Petitioner. The logical conclusion, therefore, is that his present detention continues to be governed under § 1226(a).

21. Section 1226(a) establishes the discretionary framework for noncitizens arrested and detained "[o]n warrant issued by the Attorney General." For such individuals, the Attorney General (1) "may continue to detain the arrested alien," (2) "may release the alien on . . .(A) bond of at least $1,500," or (B) "may release the alien on . . . conditional parole." 8 U.S.C. §§ 1226(a)(1)-(2). Release on an order of recognizance is a form of conditional parole under § 1226(a)(2)(B). *See Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924, at *2 (D. Mass. Sept. 9, 2025).

22. DHS makes an initial custody determination on whether to allow the noncitizen to be released under § 1226(a). 8 C.F.R. §§ 1236(c)(8), (d)(1). However, such determinations "may be reviewed by an Immigration Judge pursuant to 8 C.F.R. § 1236." 8 C.F.R. § 1003.19(a).

23. Under 8 U.S.C. § 1226, an IJ may grant bond if the noncitizen demonstrates that he or she is not a danger to the community or pose a significant risk of flight. *Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006).

24. Once an individual has been release from custody, DHS is only authorized to revoke a bond upon a finding of materially changed circumstances meriting the noncitizen's return to custody. *See, e.g.*, *Saravia v. Sessions*, 280 F. Supp. 3d 1168 (N.D. Cal. 2017) ("Once a noncitizen has been released, the law prohibits federal agents from rearresting him merely because he is subject to removal proceedings. Rather, the federal agents must be able to present evidence of materially changed circumstances—namely, evidence that the noncitizen is in fact dangerous or has become a flight risk, or is now subject to a final order of removal."); *see also Matter of Sugay*, 17 I&N Dec. 637, 640 (BIA 1981) (finding a change in circumstances, in part, when it was determined that the noncitizen was "wanted for murder in the Philippines . . . .").

25. Section 1226(c) requires mandatory detention for specifically enumerated categories of noncitizens. Section 1226(c), until recently, required the detention of noncitizens who are inadmissible or deportable because they have committed or been sentenced for certain criminal offenses, or because they are affiliated with terrorist groups or activities. *See* §§ 1226(c)(1)(A)-(D).

26. In January 2025, Congress enacted the LRA, which expanded this list by adding § 1226(c)(1)(E), which requires detention of individuals who (1) are inadmissible under §§ 1182(a)(6)(A), (C), or (7), *and* (2) who have been charged with, arrested for, or convicted of certain crimes, including burglary, theft, shoplifting, or crimes resulting in death or serious bodily injury. Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).

27. The enactment of the LRA confirms that Congress did not intend for all noncitizens who entered the country unlawfully and are found within the interior of the United States to be subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). Indeed, the LRA explicitly provides for mandatory detention for noncitizens who both entered the country unlawfully *and* committed one

of the above enumerated offenses within the United States. The LRA would not have been necessary if all noncitizens who entered the country illegally are subject to mandatory detention under § 1225(b)(2)(A). *Yajure Hurtado* effectively provides that LRA was an unnecessary, needless bill.

28. Section 1226(a) leaves no doubt that it applies to people who confront removal for being inadmissible to the United States, including those who are present without admission or parole.

ii. The Petitioner is not subject to mandatory detention under § 1225(b)(1).

29. Section 1225(b)(1) applies to noncitizens "arriving in the United States." § 1225(b)(1). "If an immigration officer determines that an alien who is arriving in the United States or is otherwise described in clause (iii) is inadmissible under section 1182(a)(6)(C) or 1182(a)(7) . . . the officer shall order the alien removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum . . . or a fear of persecution." § 1225(b)(1)(A)(i). Clause (iii) of § 1225(b)(1) allows the Attorney General (who has since delegated the responsibility to the Department of Homeland Security Secretary) to designate for expedited removal noncitizens "who ha[ve] not been admitted or paroled into the United States, and who ha[ve] not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility under this subparagraph." § 1225(b)(1)(A)(iii)(II).

30. In sum, § 1225(b)(1) authorizes expedited removal for two groups of noncitizens. *Coal. for Humane Immigrant Rts. v. Noem*, No. 25-CV-872 (JMC), 2025 WL 2192986, at *5 (D.D.C. Aug. 1, 2025). The first consists of "arriving" noncitizens who are inadmissible for misrepresentation or lack of valid entry documents. *Id.*; *see also J.E.H.G.*, 2025 WL 3523108, at *4. The regulations

define "arriving alien" as an applicant for admission coming to or attempting to come to the United States at a port of entry. 8 C.F.R. § 1.2. The second group includes certain designated noncitizens who (1) are inadmissible on the same grounds, (2) cannot demonstrate two years of continuous physical presence in the United States, and (3) fall within a class designated by the Secretary of Homeland Security. *See J.E.H.G.*, 2025 WL 3523108, at *4

31. If the noncitizen indicates an intention to apply for asylum or a fear of persecution, "the officer shall refer the alien for an interview by an asylum officer." § 1225(b)(1)(A)(ii). The asylum officer "shall conduct" these interviews "either at a port of entry or at such other place designated by the Attorney General." § 1225(b)(1)(B)(i). "If the officer determines at the time of the interview that an alien has a credible fear of persecution . . . the alien shall be detained for further consideration of the application for asylum." § 1225(b)(1)(B)(ii).

32. "[I]f the officer determines that an alien does not have a credible fear of persecution, the officer shall order the alien removed from the United States." § 1225(b)(1)(B)(iii)(I). The noncitizen may appeal this determination to an immigration judge for "prompt review," which "shall be concluded as expeditiously as possible, to the maximum extent practicable within 24 hours, but in no case later than 7 days after the date" that the asylum officer determined the noncitizen lacked a credible fear of persecution. § 1225(b)(1)(B)(iii)(III). The noncitizen "shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed." § 1225(b)(1)(B)(iii)(IV).

33. Section 1225(b)(1) does not apply here because "§ 1225(b)(1) only mandates the detention of applicants for admission who are 'arriving in the United States.'" *Jimenez v. FCI Berlin, Warden*, No. 25-CV-326-LM-AJ, 2025 WL 2639390, at *6 (D.N.H. Sept. 8, 2025). As stated above, an "arriving alien" is "an applicant for admission coming or attempting to come into the

United States." *Id.* (quoting 8 C.F.R. 1.2). As of November 2025, when the Petitioner was redetained, he was no longer "arriving in the United States" as he had been living here for nearly two years.

34. Moreover, § 1225(b)(1) is inapplicable because no immigration officer ever made the prerequisite determination that Petitioner was inadmissible under 8 U.S.C. § 1182(a)(6)(C) or § 1182(a)(7). *See Coal. for Humane Immigrant Rts.*, 2025 WL 2192986, at *5 ("Noncitizens may be eligible for expedited, rather than section 240, removal only if they are inadmissible on the basis that they either lack proper entry documents or falsified or misrepresented their application for admission."); *see also Tinoco Pineda v. Noem*, No. SA-25-CA-01518-XR, 2025 WL 3471418 (W.D. Tex. Dec. 2, 2025). Instead, the Notice to Appear explicitly charges Petitioner as inadmissible under § 1182(a)(6)(A)(i)—a ground that does not fall within § 1225(b)(1)'s scope. *See* Exh. A.

35. Nor can they now make a determination that he is inadmissible under 1182(a)(7)(A)(i)(I). Section 1182(a)(7)(A)(i)(I) provides that:

> Except as otherwise specifically provided in this chapter, any immigrant **at the time of application for admission—**
>
> (I) who is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document required by this chapter, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality if such document is required under the regulations issued by the Attorney General under section 1181(a) of this title . . .
>
> is inadmissible.

(Emphasis added). The term "application for admission" is defined under 8 U.S.C. § 1101(4) as: "the application for admission into the United States and not to the application for the issuance of an immigrant or nonimmigrant visa." This provision presupposes an actual application for entry, during which an immigrant is required to present valid entry documents. *See Torres v. Barr*, 976

F.3d 918 (9th Cir. 2020) ("We conclude that the phrase [at the time of application for admission] refers to the particular point in time when a noncitizen submits an application to physically enter into the United States."). Petitioner, however, entered without inspection and never made an application to enter the United States at the border. Further, he is certainly not making an application for admission when he was detained in November 2025. As the district court explained in *United States v. Carrillo-Moreno*, 670 F. Supp. 3d 921, 929 (D. Ariz. 2023), "there is no basis upon which to find that [an EWI] lacked the requisite entry documents at the time of application for admission," because no application ever occurred. Thus, Petitioner is clearly not inadmissible under 1182(a)(7)(A)(i)(I).

36. Critically, in *Make the Road New York v. Noem*, No. 25-CV-190 (JMC), 2025 WL 2494908 (D.D.C. Aug. 29, 2025), the court concluded that the petitioners were likely to succeed on the merits of their claim that applying the expedited removal process set forth in 8 U.S.C. § 1225(b)(1) to noncitizens apprehended in the interior of the United States—rather than at or near the border—violates the Due Process Clause. The court emphasized, among other concerns, that the procedures governing expedited removal under § 1225(b)(1), *see* 8 C.F.R. § 235.3, create substantial risks that individuals who are not statutorily subject to expedited removal will nevertheless be erroneously placed into that process. *Id.* at *12–18.

37. Finally, when Petitioner was released from custody on conditional parole in 2023 the Respondents were acting under the authority granted by § 1226, not § 1225.

iii. The Petitioner is not subject to mandatory detention under 8 U.S.C. § 1225(b)(2).

38. Section 1225(b)(2) applies to those noncitizens seeking admission. The statute states:

> In the case of an *who is an applicant for admission*, if the examining immigration officer determines that an alien *seeking admission* is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title.

(Emphasis added). For § 1225(b)(2)(A) to apply, "several conditions must be met—in particular, an 'examining immigration officer' must determine that the individual is: (1) an 'applicant for admission'; (2) 'seeking admission'; and (3) 'not clearly and beyond a doubt entitled to be admitted.'" *Martinez v. Hyde*, No. 1:25-cv-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238, at *6–7 (D. Mass. July 24, 2025). "One who is 'seeking admission' is *presently* attempting to gain admission into the United States." *Belsai D.S.*, 2025 WL 2802947, at *6 (emphasis added). "Admission" refers to "lawful entry . . . into the United States after inspection and authorization by an immigration officer." *Id.* § 1101(a)(13)(A). When Respondents detained Petitioner years after he entered the United States, he was not seeking entry, much less "lawful entry . . . after inspection and authorization by an immigration officer." *See Martinez v. Mukasey*, 519 F.3d 532, 544 (5th Cir. 2008), *as amended* (June 5, 2008) ("Under th[e] statutory definition, 'admission' is the lawful *entry* of an alien after inspection, something quite different, obviously, from post-entry adjustment of status." (Emphasis in original)).

39. As the Supreme Court has explained, the detention authority under 1225(b)(2)(A) applies "at the Nation's borders and ports of entry, where the Government must determine whether an alien seeking to enter the country is admissible." *Jennings*, 583 U.S. at 287; *see also Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379, at *18 (E.D. Mich. Aug. 29, 2025) ("1225(b)(2)(A) applies when people are being inspected, which usually occurs at the border, when they are seeking lawful entry into this country."). A person detained under § 1225(b)(2) may be released only if paroled "for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A).

40. As stated above, the Petitioner was previously released under § 1226(a), which allows for a noncitizen to be released on his own recognizance, i.e., on "conditional parole", pending removal

proceedings. Moreover, he has been in the United States for over two years subsequent to an unlawful entry and was most recently arrested in the interior of the United States. As such, he is not in custody under § 1225(b)(2)(A).

B. The Respondents' misconstruction of the detention statutes is contrary to decades of established practice and has resulted in the unlawful detention of the Petitioner.

41. The Respondents' misconstruction of the statutes is part of their scheme to greatly expand immigration detention in general by using the mandatory detention provisions of 8 U.S.C. § 1225.

42. In January 2025, DHS revised its designation under § 1225(b) to "apply expedited removal to the fullest extent authorized by statute." *Designating Aliens for Expedited Removal*, 90 Fed. Reg. 8139 (Jan. 24, 2025). As revised, expedited removal applies to noncitizens encountered anywhere in the United States who have been present for less than two years and are inadmissible for lack of valid documentation or misrepresentation. This marked the first time expedited removal was extended to large numbers of noncitizens encountered in the interior of the country. *See J.E.H.G.*, 2025 WL 3523108, at *4

43. By contrast, DHS's predecessor agency initially made no designation at all, limiting expedited removal to "arriving aliens"—that is, noncitizens encountered at ports of entry. *See J.E.H.G.*, 2025 WL 3523108, at *4 (citing *Make the Road N.Y.*, 2025 WL 2494908 , at *4). In subsequent years, DHS expanded expedited removal by designation to certain noncitizens arriving by sea and to individuals apprehended within 100 air miles of a land border who entered within the prior 14 days. *Id.* That framework remained in place until January 2025.

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

45. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission," claims that all persons who entered the United States without inspection shall now be subject to mandatory detention provision under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended, greatly affecting those who have resided in the United States for months, years, and even decades.

46. On September 5, 2025, the BIA—reversing decades of practice—adopted this same position in *Yajure Hurtado*. 29 I&N Dec. at 216. There, the BIA 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. *Id.*

47. The Respondents efforts to expand 8 U.S.C. § 1225 to provide for more mandatory detention has been rejected by courts across the nation. Accordingly, the mandatory detention provision of § 1225(b) does not apply to people like Petitioner, who have already entered and were residing in the United States at the time they were apprehended.

V. FACTS

48. The Petitioner, a citizen of Venezuela, entered the United States without inspection on or about December 2, 2023. He was apprehended after his entry and served with a Notice to Appear ("NTA") charging him as inadmissible for being present in the United States without having been admitted or paroled under 8 U.S.C. § 1182(a)(6)(A)(i). *See* Exh. A. Thereafter, DHS ordered the Petitioner's release on his own recognizance, thereby determining that he posed neither a danger to the community nor a flight risk. *See Saravia*, 280 F. Supp. 3d at 1176. The Petitioner has no criminal history and has fully complied with all conditions of his release.

49. Following his release from custody, the Petitioner resided in Texas with his family for nearly two years. On or about November 8, 2025, the Petitioner was re-detained by DHS within

the interior of the United States while reporting at a routine ICE check-in. The re-detention was not based on any materially changed circumstances that would now render him a flight risk or danger to the community. Critically, "[t]he law requires a change in relevant facts, not just a change in [the government's] attitude." *Singh v. Andrews*, No. 1:25-CV-00801-KES-SKO (HC), 2025 WL 1918679, at *7 (E.D. Cal. July 11, 2025) (quoting *Valdez v. Joyce*, 25 Civ. 4627 (GBD), 2025 WL 1707737, at *3 n.6 (S.D.N.Y. June 18, 2025)).

50. The Respondents are detaining the Petitioner with no bond at the South Texas ICE Processing Center in Pearsall, Texas. *Yajure Hurtado* renders the Petitioner ineligible for bond.

VI. EXHAUSTION OF ADMINISTRATIVE REMEDIES

51. The Petitioner has exhausted his administrative remedies to the extent required by law. It would be futile to require the Petitioner to file a bond redetermination request with the Immigration Court given that the BIA has already announced its decision on the issue of bond jurisdiction in *Yajure Hurtado*. In fact, *Yajure Hurtado* states that "Immigration Judges lack authority to hear bond requests or to grant bond to aliens, like the respondent, who are present in the United States without admission." *Yajure Hurtado*, 29 I&N Dec. at. 225 (emphasis added).

VII. CLAIMS FOR RELIEF

Count I. Statutory claim: The Petitioner is detained under § 1226(a) and is not subject to mandatory detention under § 1225(b).

52. The Petitioner has a clear right to a custody hearing by an IJ under 8 U.S.C. § 1226(a)(2). The Respondents are detaining the Petitioner in direct violation of this statute which authorizes the IJ to grant release from custody.

53. The statute cannot be clearer and requires that the Petitioner be provided with the opportunity to present his custody redetermination case before the IJ. While the BIA reached the opposite conclusion in *Yajure Hurtado*, this interpretation is erroneous and even if it were

plausible, it is not entitled to *Chevron* deference pursuant to the Supreme Court's decision in *Loper Bright Enterprises v. Raimondo*. 603 U.S. 369, 369 (2024) (overruling *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984)).

54. Moreover, in *Monteon-Camargo v. Barr*, the Fifth Circuit found that where the BIA announces a "new rule of general applicability" which "drastically change[s] the landscape," retroactive application would "contravene basic presumptions about our legislative system" and should in that case be disfavored unless the government can demonstrate that the advantages of retroactive application outweigh these grave disadvantages. 918 F.3d 423, 430-431 (2019) (quoting *Matter of Diaz-Lizarraga*, 26 I&N Dec. 847, 849, 852 (BIA 2016)). Applying DHS's expanded mandatory-detention policies and the BIA's decision in *Yajure Hurtado* to individuals like Petitioner—who entered the United States without inspection years before these changes—is impermissibly retroactive. The government's current interpretation conflicts with decades of statutory practice and administrative precedent, under which such individuals were detained under § 1226(a) and entitled to bond hearings. Retroactive application of this interpretation deprives Petitioner of these long-established rights and imposes a new burden based on past conduct, rendering him ineligible for bond in contravention of settled expectations. *See Landgraf v. Usi Film Prods.*, 511 U.S. 244, 265 (1994) ("As Justice Scalia has demonstrated, . . . [e]lementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly; settled expectations should not be lightly disrupted.").

Count II. Fifth Amendment Due Process Violation

55. The Respondents may not deprive a person of life, liberty, or property without due process of law. U.S. Const. Amend. V. The Petitioner has a weighty liberty interest as his freedom "from

government . . . detention . . . lies at the heart of the liberty that [the Fifth Amendment] protects." *Zadvydas*, 533 U.S. at 690.

56. Individuals who have been released from custody gain a protected liberty interest in remaining free from custody, and ICE must show materially changed circumstances to justify redetention. *See, e.g.*, *Matter of Sugay*, 17 I. & N. at 640; *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019); *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *11 (W.D. Tex. Sept. 22, 2025) ("[O]nce released from immigration custody, noncitizens acquire 'a protectable liberty interest in remaining out of custody on bond."); *Singh*, 2025 WL 1918679, at *6 ("Furthermore, the Supreme Court has held that, even when a statute authorizes revocation of an individual's freedom, the individual may retain a protected liberty interest under the Due Process Clause.").

57. 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). *See Martinez v. Noem*, No. 5:25-CV-1007-JKP, 2025 WL 2598379, at *2 (W.D. Tex. Sept. 8, 2025). The *Mathews* factors are: (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.

58. These factors all favor a determination that the Petitioner is being held without due process of law. The deprivation of his liberty interest based on *Yajure Hurtado* carries a high risk that the Petitioner's liberty is being erroneously deprived.

59. The Respondents' re-detention of Petitioner nearly two years after his release on his recognizance, without prior notice, any showing of changed circumstances, or a meaningful opportunity to contest his re-detention violates the Fifth Amendment's Due Process Clause.

Count III. *Accardi* Violation

60. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of "Apprehension, Custody, and Detention of Aliens," the agencies explained 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." 62 Fed. Reg. 10312, 10323 (emphasis added). The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.

61. Nonetheless, pursuant to *Yajure Hurtado*, EOIR has a policy and practice of applying § 1225(b)(2) to individuals like Petitioner.

62. The application of § 1225(b)(2)(A) to Petitioner unlawfully mandates his continued detention in violation of § 1226(a) and its regulations at 8 C.F.R. §§ 236.1, 1236.1, and 1003.19, which for decades have recognized that noncitizens present without admission are eligible for a bond hearing. *See Jennings*, 583 U.S. at 288–29 (describing § 1226 detention as relating to people "inside the United States" and "present in the country."). Such protection is not a mere regulatory grace but is a baseline Due Process requirement. *See Hernandez-Lara v Lyons*, 10 F. 4th 19, 41 (1st Cir. 2021). The only exception for such noncitizens subject to § 1226(a) is where the noncitizen is subject to mandatory detention under 8 U.S.C. § 1226(c) for certain crimes and certain national security grounds of removability. *See Demore v. Kim*, 538 U.S. 510, 512 (2003).

63. Government agencies are required to follow their own regulations. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954); *United States v. Heffner*, 420 F.2d 809, 811 (4th Cir. 1969) ("An agency of the government must scrupulously observe rules, regulations, or procedures which it has established. When it fails to do so, its action cannot stand and courts will strike it down."). A violation of the *Accardi* doctrine may itself constitute a violation of the Fifth Amendment Due Process Clause, particularly when liberty is at stake. *See, e.g.*, *Sering Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 160 (W.D.N.Y. 2025) (citing *Rombot v. Souza*, 296 F. Supp. 3d 383, 388 (D. Mass. 2017)).

VIII. PRAYER FOR RELIEF

For the foregoing reasons, the Petitioner requests that the Respondents be cited to appear and that, upon due consideration, the Court enter an order:

a. Ordering the Respondents, pursuant to 28 U.S.C. § 2243, to demonstrate within five days why the Petitioner's writ of habeas corpus should not be granted.

b. Granting a writ of habeas corpus finding that the Petitioner's detention is unlawful and unconstitutional;

c. Providing declaratory relief that the Petitioner's detention is unlawful;

d. Ordering Petitioner's immediate release from custody, or, in the alternative, ordering Respondents to provide him a bond hearing under 8 U.S.C. § 1226(a) within five days of this Court's order, at which DHS bears the burden to justify his re-detention by demonstrating, by clear and convincing evidence, materially changed circumstances rendering Petitioner a danger to the community or a flight risk;

e. Ordering that Respondents not transfer the Petitioner to any facility outside of the boundaries of the Western District of Texas while this writ is pending.

f. Awarding Petitioner reasonable attorney's fees, expenses and costs; and

g. Granting Petitioner such other and further relief as the Court may deem just and proper.

Respectfully submitted,

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ATTORNEYS FOR PETITIONER

VERIFICATION UNDER 28 U.S.C. § 2242

Acting on behalf of the Petitioner, I verify that the foregoing factual allegations are true and correct as required by 28 U.S.C. § 2242.

/s/ Alejandra Martinez
Alejandra Martinez