JS 44 (Rev. 03/24)

CIVIL COVER SHEET 5:25-cv-154-DCB-RPM

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

Guillermo Jovanny ALULIMA CORNEJO

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

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Brandon H Riches, The Riches Law Firm PLLC
PO Box 1526, Ocean Springs, MS 39566; 228-800-4178

DEFENDANTS

RAPHAEL VERGARA, et al.

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)*

SOUTHERN DISTRICT OF MISSISSIPPI
FILED
DEC 15 2025
ARTHUR JOHNSTON
BY DEPUTY

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

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
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- ☐ 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
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- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

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- ☐ 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
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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))

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- ☐ 871 IRS—Third Party 26 USC 7609

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- ☐ 376 Qui Tam (31 USC 3729(a))
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- ☐ 450 Commerce
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- ☐ 480 Consumer Credit (15 USC 1681 or 1692)
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- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
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- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

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- ☐ 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

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(c)(5) (habeas corpus)

Brief description of cause:
Request for enforcement of Class certified, alternative request for Bond hearing

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
12/09/2025

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # 13157 AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI

GUILLERMO JOVANNY ALULIMA CORNEJO,

[redacted]

Petitioner/Plaintiff,

v.

RAPHAEL VERGARA, Warden, Adams County Correctional Center, **TODD LYONS,** Acting Director, Immigration and Customs Enforcement, **KRISTI NOEM,** Secretary of United States Department of Homeland Security, **MELISSA HARPER,** Immigration and Customs Enforcement, New Orleans Field Office Director, **PAMELA BONDI,** United States Attorney General,

Respondents/Defendants

Civil Action No. 5:25-cv-154-DCB-RPM

ORAL ARGUMENT REQUESTED

PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241 AND COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

I. INTRODUCTION

1. Petitioner, Guillermo Jovanny Alulima Cornejo (Mr. Alulima Cornejo), is in the physical custody of Respondents at the Adams County Correctional Center in Natchez, Mississippi. Despite having been issued deferred action by the authority of the U.S. Department of Homeland Security (DHS) Secretary pursuant to 8 U.S.C. § 1103, which is intended to prevent removal and enforcement actions against Petitioner[1], Respondents have detained Petitioner. On belief and information, Petitioner has been in custody of Respondents since on or about October 13, 2025.

[1] *See also* U.S. Citizenship and Immigration Services, *Bona Fide Determination Process, USCIS Policy Manual*, Vol. 1, Part C, ch. 5: Appendix § A (Dec. 4, 2025), https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5 (citing *Heckler v. Chaney*, 470 U.S. 821, 831 (1985) and other cases for authority of the Executive Branch to grant deferred action)

2. Petitioner brings this petition for a writ of habeas corpus to seek enforcement of their rights as members of the Bond Denial Class certified in Maldonado Bautista v. Santacruz, No. 5:25-CV-01873-SSS-BFM (C.D. Cal.) Petitioner faces unlawful detention both because the Department of Homeland Security (DHS) and the Executive Office for Immigration Review (EOIR) have refused to abide by the declaratory judgment issued on behalf of the certified class in Maldonado Bautista v. Santacruz and because Respondents have erroneously concluded Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2).

3. On November 20, 2025, the district court granted partial summary judgment on behalf of individual plaintiffs and on November 25, 2025, certified a nationwide class and extended declaratory judgment to the certified class. Maldonado Bautista v. Santacruz, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3289861, at *11 (C.D. Cal. Nov. 20, 2025) (order granting partial summary judgment to named Plaintiffs-Petitioners); Maldonado Bautista v. Santacruz, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025) (order certifying Plaintiffs-Petitioners' proposed nationwide Bond Eligible Class, incorporating and extending declaratory judgment from Order Granting Petitioners' Motion for Partial Summary Judgment).

4. The declaratory judgment held that the Bond Denial Class members are detained under 8 U.S.C. § 1226(a), and thus may not be denied consideration for release on bond under § 1225(b)(2)(A). Maldonado Bautista, 2025 WL 3289861, at *11.

5. Nonetheless, the Executive Office for Immigration Review and its subagency the Immigration Court and the Department of Homeland Security (DHS) have blatantly refused to abide by the declaratory relief and have unlawfully ordered that Petitioner be denied the opportunity to be released on bond.

6. Petitioner, Mr. Alulima Cornejo, is a member of the Bond Eligible Class, as he:

a. does not have lawful status in the United States and is currently detained at the Adams County Correctional Center. He was apprehended by immigration authorities on or about October 13, 2025;

b. entered the United States without inspection over 20 years ago and was not apprehended upon arrival, cf. id.; and

c. is not detained under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231.

7. After apprehending Petitioner on or about October 13, 2025, the DHS placed him in removal proceedings pursuant to 8 U.S.C. § 1229a. DHS has charged Petitioner as being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i), as someone who entered the United States without inspection and under 8 U.S.C. § 1182(a)(7)(A)(i), as an applicant for admission who does not have valid visa or other entry documents.

8. The Court should expeditiously grant this petition.

9. Respondents are bound by the judgment in Maldonado Bautista, as it has the full "force and effect of a final judgment." 28 U.S.C. § 2201(a). Nevertheless, Respondents continue to flagrantly defy the judgment in that case and continue to subject Petitioner to unlawful detention despite his clear entitlement to consideration for release on bond as a Bond Eligible Class member.

10. Immigration judges have informed class members in bond hearings that they have been instructed by "leadership" that the declaratory judgment in Maldonado Bautista is not controlling, even with respect to class members, and that instead IJs remain bound to follow the agency's prior decision in Matter of Yajure Hurtado, 29 I. & N. Dec. 216 (BIA 2025). 2

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[2] See Exhibit F, Mark Rivera, *Judge's Order Could Make Thousands Of Arrested Immigrants Eligible For Bond Hearings And Release*, ABC 7 Eye Witness News, Dec. 2, 2025, https://abc7chicago.com/post/us-immigration-news-judges-order-could-make-thousands-arrested-immigrants-eligible-bond-hearings-release/18242722/

11. Because Respondents are detaining Petitioner in violation of the declaratory judgment issued in Maldonado Bautista, the Court should accordingly order that within one day, Respondent DHS must release Petitioner.

12. Alternatively, the Court should order Petitioner's release unless Respondents provide a bond hearing under 8 U.S.C. § 1226(a) within seven days.

II. JURISDICTION

13. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Adams County Correctional Facility in Natchez, Mississippi.

14. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

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

III. VENUE

16. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue lies in the United States District Court for the Southern District of Mississippi, the judicial district in which Petitioner currently is detained.

17. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the Southern District of Mississippi.

IV. REQUIREMENTS OF 28 U.S.C. § 2243

18. The Court should grant the petition for writ of habeas corpus "forthwith," as the legal issues have already been resolved for class members in *Maldonado Bautista.*

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

V. PARTIES

20. Petitioner, Guillermo J. Alulima Cornejo is alleged to be a citizen of Ecuador who has been in immigration detention since on or about October 13, 2025. Petitioner has resided in the United States since at least on or about June 2005. After Petitioner was arrested in Chicago, IL, ICE did not set bond. Because of DOJ and DHS policy, Petitioner has been unable to request a bond hearing since DOJ and DHS have taken the position that Petitioner is an "applicant for admission" and therefore ineligible for bond.

21. Respondent Mellissa B. Harper is the Director of the New Orleans Field Office of ICE's Enforcement and Removal Operations division, the Filed office with jurisdiction over the Adams County Correctional Center. As such, Director Harper is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. She is named in his official capacity.

22. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

23. Respondent Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.

24. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. She is sued in her official capacity.

25. Respondent Executive Office for Immigration Review (EOIR) is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings.

26. Respondent Rafael Vergara is employed by CoreCivic as Warden of the Adams County Correction Center where Petitioner is detained. He has immediate physical custody of Petitioner. He is sued in his official capacity.

VI. FACTUAL BACKGROUND

27. Petitioner is a 47-year-old national of Ecuador. He last entered the United States without inspection on or about June 2005 and has resided in the United States since that time. He has never departed the United States. He lived in Chicago, Illinois prior to his detention

28. Petitioner has been self-employed as a day laborer in construction for several years. In fact, respondent has been employment authorized since July 24, 2024 under 8 C.F.R. § 274.a12(c)(14) because of a DHS grant of deferred action issued to Petitioner on account of a bona fide determination resulting from an application for "U nonimmigrant Status" under 8 U.S.C. § 1101(a)(15)(U). *See* 8 U.S.C. §1184(p)(6).

29. Petitioner filed or U nonimmigrant status on or about January 22, 2018 as a result of having been the victim of qualifying criminal activity under 8 U.S.C §1101(a)(15)(U)(iii). On December 15, 2022, DHS notified Petitioner that he had been granted deferred action under 8 U.S.C. § 1184(p)(6) while he waited for the U.S. Citizenship and Immigration Services (USCIS) to work to through the waitlist of visas to become available so that final adjudication of his application may be made. Respondent is still waiting for final adjudication. To date, DHS has not rescinded the deferred action issued to Petitioner.

30. On information and belief, Respondent was only once arrested in or about 2006 for misdemeanor trespass to property in violation of 720 ILCS 5/21-3(a)(2). He was not convicted as the charges against him were stricken. Given this is his only arrest, Petitioner is not subject to mandatory detention under 8 U.S.C. § 1226(c).

31. On or about October 13, 2025, Petitioner was approached by DHS officials outside of a Dunkin Donuts after he had just eaten breakfast before starting his workday. On information and belief, Petitioner was detained without a warrant.[3] According to Petitioner, DHS did not identify Petitioner until after they approached him to ask him if he was in the United States lawfully. At that time, Petitioner explained he had deferred action and work authorization. Not until he provided the documents to DHS did officers verify his identity and status. Despite the deferred action issued by DHS, officers detained Petitioner. He has since been transferred to Adams County Correctional Center where he has been since.

[3] Petitioner is further covered by the settlement in *Castañon Nava et al. v. Department of Homeland Security et al.*, No. 18-cv-3757-RRP (N.D. Ill.), which would require his release because of a violation of the agreement prohibiting warrantless arrests or probable cause within the jurisdiction of the Chicago Field Office.

32. DHS has placed Petitioner in removal proceedings before the before the Executive Office for Immigration Review pursuant to 8 U.S.C. § 1229a by filing a Notice to Appear. Petitioner's next hearing before EOIR is set to take place on December 16, 2025.

33. Petitioner's bond hearing has not yet occurred and is anticipated that given the policy of DHS and EOIR, that without intervention from this court, such a hearing will not occur.

34. Pursuant to Respondents' new policy, discussed *infra*, Petitioner remains in mandatory detention. Absent relief from this Court, he faces the prospect of months, or even years, in immigration custody, separated from his family and community without ever receiving an individualized hearing justifying his detention in violation of the INA and Due Process.

VII. EXHAUSTION OF REMEDIES

35. No statutory requirement of administrative exhaustion applies to Petitioner's case. Moreover, the judicially created "general rule that parties exhaust prescribed administrative remedies before seeking relief from the federal courts" does not apply to Petitioner's present challenge, as there are no prescribed administrative remedies to which he could resort. *McCarthy v. Madigan*, 503 U.S. 140, 144–45 (1992), *superseded by statute on other grounds as recognized in Woodford v. Ngo*, 548 U.S. 81 (2006).

36. In particular, DHS has taken the position that a noncitizen like Petitioner, who entered without inspection, is subject to mandatory detention under 8 U.S.C. § 1225, and the Executive Office for Immigration Review has affirmed that view. In a published decision, the Board of Immigration Appeals recently held that "Immigration Judges lack authority to hear bond requests or to grant bond to [noncitizens] who are present in the United States without admission." *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Under the BIA's interpretation, Petitioner is ineligible for bond as a noncitizen who entered the United States without inspection.

Accordingly, there are no administrative remedies that he could exhaust before seeking habeas relief. *See Singh v. Lewis*, No. 4:25-CV-96-RGJ, 2025 WL 2699219, at *3 (W.D. Ky. Sept. 22, 2025) ("[t]he United States has made clear their position on Section 1225, and it is being applied at all levels within the DHS. Therefore, it is unlikely that any administrative review would lead to the United States changing its position and precluding judicial review"); *Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, 2025 WL 2496379, at *4 (E.D. Mich. Aug. 29, 2025) ("Because exhaustion would be futile and unable to provide Lopez-Campos with the relief he requests in a timely manner, the Court waives administrative exhaustion and will address the merits of the habeas petition.").

37. Additionally, despite the partial summary judgement in *Maldonado Bautista* certifying a national class action and holding that Respondents are violating the INA in applying mandatory detention under 8 U.S.C. § 1225(b)(2) to individuals like Petitioner, the DOJ, which oversees EOIR, has instructed immigration judges to ignore the class action and continue applying *Matter of Yajure Hurtado* to deny bond to individuals like petitioner.[4] As such, requesting bond with the immigration judge is futile.

38. Further, neither an immigration judge nor the Board of Immigration Appeals can rule on a petitioner's constitutional claims. *See Matter of R-A-V-P-*, 27 I. & N. Dec. 803, 804 n.2 (B.I.A. 2020) (holding that IJs and the BIA lack any authority to consider the constitutionality of the statutes or regulations governing immigration detention that they administer and are bound to follow); *Matter of C--*, 20 I. & N. Dec. 529, 532 (B.I.A. 1992) ("[I]t is settled that the immigration judge and this Board lack jurisdiction to rule upon the constitutionality of the Act and the

[4] See article cited *supra* note 1

regulations."); *see also Gonzalez v. O'Connell*, 355 F.3d 1010, 1017 (7th Cir. 2004) (noting that "the BIA has no jurisdiction to adjudicate constitutional issues").

VIII. LEGAL FRAMEWORK

A. Detention Authority and Respondent's Efforts to Expand Mandatory Detention

39. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.

40. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens "already in the country." *See Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018). Section 1226(a) "sets out the default rule: The Attorney General may issue a warrant for the arrest and detention of a[] [noncitizen] 'pending a decision on whether the [noncitizen] is to be removed from the United States." *Id.* at 288 (quoting § 1226(a)). Individuals in Section 1226(a) detention are generally entitled to a bond hearing at the outset of their detention. *See* § 1226(a)(2); 8 C.F.R. §§ 1003.19(a), 1236.1(c)(8), (d)(1); *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239, 1247 (W.D. Wash. 2025) ("those detained under Section 1226(a) are entitled to a bond hearing before an [immigration judge] at any time before entry of a final removal order.").

41. Section 1226(c) "carves out a statutory category" of noncitizens from Section 1226(a) for whom detention is mandatory, comprised of individuals who have committed certain "enumerated ... criminal offenses [or] terrorist activities." *Jennings*, 583 U.S. at 289 (citing § 1226(c)(1)). Among the individuals carved out and subject to mandatory detention are certain categories of "inadmissible" noncitizens. § 1226(c)(1)(A), (D), (E). Reference to such inadmissible noncitizens makes clear that, by default, people who are applicants for admission but encountered in the interior are afforded a bond hearing under subsection 1226(a). Courts have recently

confirmed this understanding of Section 1226. *See Rodriguez Vazquez*, 779 F. Supp. 3d at 1257 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)) ("When Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies."); *see also, e.g.*, *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *6 (D. Mass. July 7, 2025) ("inadmissibility on one of the three grounds specified in Section 1226(c)(1)(E)(i) is not by itself sufficient to except [a noncitizen] from Section 1226(a)'s discretionary detention framework").

42. Second, the INA provides for mandatory detention of certain categories of noncitizens "seeking entry into the United States" under 8 U.S.C. § 1225(b). *Jennings*, 583 U.S. at 297; *see* § 1225(b) ("Inspection of applicants for admission").

43. In *Jennings*, the Supreme Court explained that this mandatory 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 inadmissible." *Jennings*, 583 U.S. at 287 (emphasis added). Noncitizens subject to mandatory detention under Section 1225 may not be released except "for urgent humanitarian reasons or significant public benefit" under the parole authority provided by 8 U.S.C. § 1182(d)(5)(A). *See id.* at 300.

44. Section 1225 is split into two categories. Section 1225(b)(1) provides for mandatory detention of noncitizens charged with enumerated grounds of inadmissibility *and* placed in expedited removal proceedings. 8 U.S.C. § 1225(b)(1)(A)(i). Meanwhile, Section 1225(b)(2) applies only to recently arrived noncitizens seeking entry at a border or port of entry.

45. Last, the INA also provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)–(b).

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

47. Respondents have recently taken various steps seeking to expand their use of mandatory detention under Section 1225(b)(2) beyond its plain language.

48. On July 8, 2025, ICE, "in coordination with" DOJ, announced a new policy that rejected well-established understanding of the statutory framework and reversed decades of practice. *See* U.S. Immigration and Customs Enforcement, Interim Guidance Regarding Detention Authority for Applicants for Admission (July 8, 2025), https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission.

49. The new policy claims that all persons who entered the United States without inspection shall now be deemed "applicants for admission" under 8 U.S.C. § 1225 and therefore are subject to mandatory detention under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended and affects those who have resided in the United States for months, years, and even decades.

50. On September 5, 2025, the Board of Immigration Appeals (BIA) issued a published decision adopting this same position. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). That decision holds that all noncitizens who entered the United States without admission or parole are considered applicants for admission and are ineligible for immigration judge bond hearings.

B. Respondent's Policy on Section 1225(b)(2) Is Incorrect

51. Respondent's policy, that all undocumented noncitizens who entered without inspection are considered applicants for admission and subject to mandatory detention under Section 1225(b)(2)(A), is incorrect. Instead, the statutory text, the statutory framework, Congressional intent, the longstanding practice of the agency, and the decisions of many federal courts across the nation – including other courts in the 5th Circuit – limit Section 1225(b)(2)'s scope to recently arrived noncitizens seeking admission at a border or port of entry. *See e.g. Pineda*

Parada v. Rice, 2025 WL 3146250 (W.D. La. Nov. 4, 2025); *Cardenas Perez v. Noem*, No. 1:25-cv-181 (S.D. Tex. Nov. 20, 2025).

i. Statutory Text

52. The text of Section 1225, along with its placement in the overall detention scheme of the INA, make clear that the terms "applicant for admission" and "seeking admission" in Section 1225(b)(2) do not include individuals who have entered without inspection and are apprehended when already inside the United States.

53. Section 1225 is titled: "Inspection by immigration officers; expedited removal of inadmissible *arriving* aliens; referral for hearing." (emphasis added). As courts have recognized, "[t]he added word of 'arriving' indicates that the statute governs 'arriving' noncitizens, not those present already." *Beltran Barrera v. Tindall*, No. 3:25-CV-541-RGJ, 2025 WL 2690565, at *4 (W.D. Ky. Sept. 19, 2025) (citing *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425, at *5 (E.D. Mich. Sept. 9, 2025)). This limitation is particularly clear when compared to Section 1226's general title: "Apprehension and detention of aliens."

54. Further, Section 1225(b)(2)'s specific subheading, "Inspection of Other Aliens," subsection 1225(b)(2)(B)'s mention of "crewm[e]n" and "stowaway[s]," and subsection 1225(b)(2)(C)'s use of the active language "arriving," reinforce the limited scope of Section 1225(b)(2)'s applicability to those who have recently arrived at a border or port of entry.

55. Finally, the term "seeking" in "seeking admission" "implies action – something that is currently occurring, and in this instance, would most logically occur at the border upon inspection." *Lopez-Campos*, 2025 WL 2496379, at *6 (E.D. Mich. Aug. 29, 2025); *see also Beltran Barrera,* 2025 WL 2690565, at *4. Noncitizens who are present in the country for years are not "seeking admission." *Lopez-Campos*, at *6; *Beltran Barrera*, at *4.

ii. Statutory Framework

56. The statutory framework further supports that Section 1225(b)(2) does not apply to noncitizens, like Petitioner, who have lived in the United States for years and who were apprehended while residing within the United States.

57. The INA's entire framework is premised on Section 1225 governing detention of "arriving [noncitizens]" while Section 1226 "applies to [noncitizens] already present in the United States." *Jennings*, 583 U.S. at 288, 301; *see also Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588, at *8 (S.D.N.Y. Aug. 13, 2025) ("[T]he line historically drawn between sections 1225 and 1226, which makes sense of their text and the overall statutory scheme, is that section 1225 governs detention of non-citizens 'seeking admission into the country,' whereas section 1226 governs detention of non-citizens 'already in the country.'") (cleaned up) (citing *Jennings*, 583 U.S. at 288-89); *Martinez v. Hyde*, 2025 WL 2084238, at *8 (D. Mass. July 24, 2025) ("The idea that a different detention scheme would apply to non-citizens 'already in the country,' as compared to those 'seeking admission into the country,' is consonant with the core logic of our immigration system ") (cleaned up) (citing *Jennings*, 583 U.S. at 289).

58. A fundamental principle of statutory construction is that courts must interpret statutes to give meaning to all provisions and avoid reading out or rendering superfluous any single provision. *Corley v. United States*, 556 U.S. 303, 314 (2009) ("one of the most basic interpretive canons . . . [a] statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant[.]") (cleaned up). The government's current reading of Section 1225(b)(2) violates this principle.

59. Section 1226(c) includes carve outs for certain categories of inadmissible noncitizens, who would otherwise fall under Section 1226(a), that are instead subject to mandatory

detention. 8 U.S.C. § 1226(c)(1)(A), (D), (E). The inclusion of these carve outs in Section 1226(c) indicates that, contrary to Respondents' interpretation, there are noncitizens who have not been admitted and that are not governed by Section 1225's mandatory detention scheme. Indeed, if the government's interpretation were correct, it would render these portions of Section 1226(c) superfluous since those same individuals would already be subject to mandatory detention under Section 1225(b)(2).

60. The recent amendment to Section 1226(c) confirms this statutory framework. Just this year, Congress passed the Laken Riley Act, which added additional categories of Section 1226(a) carve outs that are now subject to mandatory detention under Section 1226(c). Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025); 8 U.S.C. § 1226(c)(1)(E). Specifically, the Laken Riley Act mandates the detention of noncitizens who are inadmissible under §§ 1182(a)(6)(A) (noncitizens "present in the United States without being admitted or paroled"), 1182(a)(6)(C) (misrepresentation), or 1182(a)(7) (lacking valid documentation) and who have been arrested for, charged with, or convicted of certain crimes. *Id.* Again, if Section 1225(b)(2) were already meant to subject these groups of inadmissible noncitizens to mandatory detention, it would render this portion of the Laken Riley Act redundant. *See Beltran Barrera*, 2025 WL 2690565, at *4; *Lopez-Campos*, 2025 WL 2496379, at *8.

iii. Congressional Intent and Longstanding Agency Practice

61. Congressional intent and longstanding historical practice underscore Petitioner's reading of the statute.

62. The current detention system has been in place since the passage 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.

63. Following the enactment of the IIRIRA, the Executive Office for Immigration Review drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under Section 1225 and that they were instead detained under Section 1226(a) and eligible for bond and bond redetermination. *See* 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

64. In the decades that followed, most people who entered without inspection and were apprehended inside the United States were detained under Section 1226(a) and received bond hearings, unless their criminal history rendered them ineligible. 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 immigration judge 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 Section 1226(a) simply "restates" the detention authority previously found at Section 1252(a)).

iv. Recent Federal Court Decisions Confirming Petitioner's Position including the court in Maldonado Bautista that certified the national class action

65. In over 300 cases nationwide, numerous federal courts have reached conclusions consistent with Petitioner's position, including the federal court in *Maldonado Bautista v. Santacruz*, No. 5:25-cv-1873 (C.D. Cal. Nov. 20, 2025).

66. Prior to Madonado Bautista and since, several courts have reached consistent conclusions nationwide. For example, after immigration judges in the Tacoma, Washington, stopped providing bond hearings for persons who entered the United States without inspection, the U.S. District Court in the Western District of Washington found that such a reading of the INA is likely unlawful and that Section 1226(a), not Section 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d

1239. Other courts have reached the same conclusion, rejecting Respondent's erroneous interpretation of the INA both prior to and since ICE implemented its July 8, 2025, interim guidance. *See, e.g., Gomes v. Hyde*, 2025 WL 1869299, at *8; *Martinez,* 2025 WL 2084238; *Lopez Benitez,* 2025 WL 2371588; *Garcia Jimenez v. Kramer*, No. 4:25-cv-03162-JFB-RCC, 2025 WL 2374223 (D. Neb. Aug. 14, 2025); *Aguilar Maldonado v. Olson*, No. 25-CV-3142 (SRN/SGE), 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v Noem*, 5:25-cv-01789-ODW-DFM, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Jacinto v. Trump, et al.*, 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 (D. Neb. August 19, 2025); *Leal-Hernandez v. Noem*, 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Lopez-Campos*, 2025 WL 2496379; *Herrera Torralba v. Knight*, 2:25-cv-03166-RFB-DJA, 2025 WL 2581792 (D. Nev. Sept. 5, 2025).

67. The BIA's decision in *Yajure Hurtado* has not slowed the steady flow of decisions rejecting Respondents' position. *See, e.g., Singh v. Lewis*, 2025 WL 2699219, at *3 (disagreeing with BIA's analysis and according no deference under *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 413 (2024)); *Beltran Barrera*, 2025 WL 2690565, at *5 (same); *Pizarro Reyes v. Raycraft*, 2025 WL 2609425, at *6-8 (same); *Sampiao v. Hyde*, 2025 WL 2607924, at *8 n.11 (D. Mass. Sept. 9, 2025) (same); *Aceros v. Kaiser*, No. 25-CV-06924-EMC (EMC), 2025 WL 2637503, at *9 (N.D. Cal. Sept. 12, 2025) (same).

C. Petitioner's Detention Violates the INA

68. Petitioner's detention is not authorized under Section 1225(b)(2).

69. As discussed above, mandatory detention under Section 1225(b)(2) applies only to recently arrived noncitizens seeking admission at a border or port of entry, not individuals who entered without inspection and were later detained inside the country.

70. Here, "there is nothing in the record to suggest that [Petitioner] ever attempted to gain lawful entry." *Lopez-Campos*, 2025 WL 2496379, at *6. Petitioner entered without inspection, never encountered a DHS official subsequent to his last entry, and lived in the United States for at least six years prior to being detained. As such, Petitioner is not subject to mandatory detention under Section 1225(b)(2).

71. Petitioner's detention is not authorized under Section 1226(a), either. As discussed above, Section 1226(a)'s discretionary detention framework requires a bond hearing to make an individualized custody determination based on Petitioner's risk of flight or dangerousness. Here, Respondents have failed to provide such a hearing. Further, there is no information indicating that Petitioner is a flight risk or danger to the community.

72. Lacking any statutory basis for her detention, Respondent must release Petitioner or, in the alternative, promptly hold a bond hearing to determine whether he should remain in custody.

D. Due Process Clause

73. Noncitizens are entitled to due process of the law under the Fifth Amendment. *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993). To determine whether civil detention violates a noncitizen's Fifth Amendment due process rights, courts apply the three-part test in *Mathews v. Eldridge*, 424 U.S. 319 (1976).

74. Under *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." 424 U.S. at 335.

i. Private Interest

75. As to the first *Mathews* factor, "[t]he interest in being free from physical detention" is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529, 531 (2004). Petitioner has been detained for since on or about October 13, 2025 at the Adams County Correctional Center in conditions that are indistinguishable from criminal incarceration. This detention prevents him from carrying on in authorized work to support himself and others in the community. His detention ongoing detention is further inconsistent with the deferred action that the Secretary of DHS issued to him under the authority of 8 U.S.C. § 1103 because of his pending petition for U nonimmigrant status under 8 U.S.C. § 1101(a)(15)(U).

ii. Risk of Erroneous Deprivation

76. As to the second *Mathews* factor, courts must "assess whether the challenged procedure creates a risk of erroneous deprivation of individuals' private rights and the degree to which alternative procedures could ameliorate these risks." *Gunaydin v. Trump*, No. 25-CV-01151 (JMB/DLM), 2025 WL 1459154, at *8 (D. Minn. May 21, 2025). The current procedures cause an erroneous deprivation of Petitioner's liberty interest in remaining free from detention.

77. As discussed above, the statutory text, statutory framework, Congressional intent, the longstanding practice of the agency, and the decisions of many federal courts across the nation leave no doubt that Section 1225(b)(2) applies only to recently arrived noncitizens seeking entry at a border or port of entry, not noncitizens who entered without inspection and were detained inside the country.

78. Here, Petitioner was not arriving at a border or port of entry when he was detained, nor was her ever seeking admission to the country. Instead, he entered without inspection, never had any encounter with DHS officials, and lived in the United States for at least twenty years before being detained. As such, Petitioner is not subject to mandatory detention under Section 1225(b)(2).

79. Therefore, it is clear that the government's current procedure, subjecting Petitioner to mandatory detention under Section 1225(b)(2), creates a substantial risk of erroneous deprivation of Petitioner's interest in being free from arbitrary confinement.

80. Additionally, there are reasonable alternatives available for Respondent to pursue. As discussed above, Section 1226(a) applies to noncitizens facing charges of inadmissibility, including noncitizens like Petitioner who entered without inspection and were later detained while residing inside the country. As such, proper application of the INA's detention scheme allows for the possibility of detaining Petitioner under Section 1226(a) but first requires a bond hearing to make an individualized determination of his risk of flight or dangerousness. Such a hearing has not happened. Without it, the risk of erroneous deprivation of Petitioner's freedom is high. *See Singh v. Lewis*, 2025 WL 2699219, at *9 ("the risk of erroneously depriving him of his freedom is high if the IJ fails to assess his risk of flight or dangerousness.").

iii. Government Interest

81. As to the third *Mathews* factor, the government's interest in maintaining the current procedure is minimal here. The new interpretation of Section 1225(b)(2) – that people like Petitioner who have resided in the United States for years are now subject to mandatory detention – flies in the face of the statutory text, statutory framework, Congressional intent, almost three decades of prior practice, and the decisions of federal courts across the nation. Any government

interest in public safety or ensuring that Petitioner attends future immigration proceedings would be satisfied through proper application of Section 1226(a), which requires a bond redetermination hearing where an immigration judge will consider Petitioner's individualized facts and circumstances to determine whether he is a danger to the community or a flight risk.

IV. CLAIM FOR RELIEF
Violation of the INA:
Request for Relief Pursuant to *Maldonado Bautista*

82. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

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

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

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

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

87. By denying Petitioner a bond hearing under § 1226(a) and asserting that he is subject to mandatory detention under § 1225(b)(2), Respondents violate Petitioner's statutory rights under the INA and the Court's judgment in *Maldonado Bautista*.

PRAYER FOR RELIEF

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

a. Assume jurisdiction over this matter;

b. Issue a writ of habeas corpus requiring that within one day, Respondents release Petitioner;

c. Alternatively, issue a writ of habeas corpus requiring Respondents to release Petitioner unless they provide a bond hearing under 8 U.S.C. § 1226(a) within seven days;

d. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act (EAJA), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and

e. Grant any other and further relief that this Court deems just and proper.

I affirm, under penalty of perjury, that the foregoing is true and correct.

Respectfully submitted this the 9th day of December, 2025.

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