UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

GUSATVO ELADIO GAVILANEZ ESPINOZA Petitioner, v. **KEVIN JOYCE,** Sheriff of Cumberland County; **KRISTI NOEM,** Secretary of the U.S. Department of Homeland Security; and, **PAMELA BONDI,** Attorney General of the United States, in their official capacities Respondents.	**PETITION FOR WRIT OF HABEAS CORPUS**

INTRODUCTION

1. Petitioner, Gustavo Eladio Gavilanez Espinoza, is an Ecuadorian citizen who entered the United States in 2004. Before detention, Petitioner was residing at [redacted] He is presently detained at Cumberland County Jail, located at 50 County Way, Portland, ME 04102.
2. On November 29, 2025, near a gas station in Hopkinton, Massachusetts, Petitioner was detained by ICE. He was with several co-workers at the time of his detention.
3. Petitioner is present in the United States and, on information and belief, the Department of Homeland Security ("DHS") has alleged or will allege that Petitioner was not previously admitted or paroled into the United States.
4. Petitioner cannot be subject to mandatory detention under 8 U.S.C. § 1225(b)(1), including because Petitioner does not meet the criteria for Expedited Removal. *See Make the Road New York v. Noem*, No. 25-190, 2025 WL 2494908, at *23 (D.D.C. Aug. 29, 2025).

5. Petitioner cannot be subject to mandatory detention under 8 U.S.C. § 1225(b)(2), including because, as a person already present in the United States, Petitioner is not presently "seeking admission" to the United States. *See Aguiriano v. Romero v. Hyde*, No. 25-11631, 2025 WL 2403827, at *1, 8-13 (D. Mass. Aug. 19, 2025).
6. On information and belief, Petitioner was not, at the time of arrest, paroled into the United States pursuant to 8 U.S.C. § 1182(d)(5)(A), and therefore Petitioner could not "be returned" under that provision to mandatory custody under 8 U.S.C. § 1225(b) or any other form of custody. Petitioner is not subject to mandatory detention under § 1225 for this reason as well.
7. Petitioner is not lawfully subject to mandatory detention under 8 U.S.C. § 1226(c), including because he has not been convicted of any crime that triggers such detention. See Demore v. Kim, 538 U.S. 510, 513-14, 531 (2003) (allowing mandatory detention under § 1226(c) for brief detention of persons convicted of certain crimes and who concede removability).
8. Accordingly, Petitioner is subject to detention, if at all, under 8 U.S.C. § 1226(a).
9. As a person detained under 8 U.S.C. § 1226(a), Petitioner must, upon his request, receive a custody redetermination hearing (colloquially called a "bond hearing") with strong procedural protections. See Hernandez-Lara v. Lyons, 10 F.4th 19, 41 (1st Cir. 2021); Doe v. Tompkins, 11 F.4th 1, 2 (1st Cir. 2021); Brito v. Garland, 22 F.4th 240, 256-57 (1st Cir. 2021) (affirming class-wide declaratory judgment); 8 C.F.R. 236.1(d) & 1003.19(a)-(f).
10. Petitioner requests such a bond hearing.

11. However, on September 5, 2025, in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), the Board of Immigration Appeals issued a decision which purports to require the Immigration Court to unlawfully deny a bond hearing to all persons such as Petitioner.[1]

12. The Immigration Court lacks jurisdiction to adjudicate the constitutional claims raised by Petitioner, and any attempt to raise such claims would be futile. *See Flores-Powell*, 677 F. Supp. 2d at 463 (holding "exhaustion is excused by the BIA's lack of authority to adjudicate constitutional questions and its prior interpretation" of the relevant statute).

13. There is no statutory requirement for Petitioner to exhaust administrative remedies. *See Gomes v. Hyde*, No. 25-11571, 2025 WL 1869299, at *4 (D. Mass. July 7, 2025) ("[E]xhaustion is not required by statute in this context.").

14. Accordingly, there is no requirement for Petitioner to further exhaust administrative remedies before pursuing this Petition. *See Portela-Gonzalez v. Sec'y of the Navy*, 109 F.3d 74, (1st Cir. 1997) (explaining that, where statutory exhaustion is not required, administrative exhaustion not required in situations of irreparable harm, futility, or predetermined outcome).

15. Accordingly, Petitioner petitions this Court to assume jurisdiction and issue a writ of habeas corpus barring ICE from transferring her outside the District of Maine, ordering her to be transported to the Woburn District Court, and receive a bond hearing.

[1] The BIA's reversal and newly revised interpretation of the statute are not entitled to any deference. *See Loper Bright Ent. v. Raimondo*, 603 U.S. 369, 412-13 (2024).

16. Petitioner's current detention violates both the Fourth and Fifth Amendments of the U.S. Constitution.

17. He requests that this Court immediately release him from detention, also enjoining Respondents from re-detaining him unless there are changes in the circumstances that would justify detention.

18. Furthermore, Petitioner also requests this Court to issue a restraining order to prevent him from being transferred from the state of Maine for the duration of these proceedings.

JURISDICTION

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

20. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), and 28 U.S.C. § 1331 (federal question).

21. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et. seq*., the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq*., and the All Writs Act, 28 U.S.C. § 1651.

VENUE

22. Venue is proper in this District because Respondents are officers, employees, or agencies of the United States, and to the best of Undersigned Counsel's knowledge, Petitioner is currently detained within the jurisdiction of this District. 28 U.S.C. § 2241.

PARTIES

23. The Petitioner, Mr. Gavilanez Espinoza, resided in Framingham, Massachusetts but is being detained at the Cumberland County Jail in Maine. He is an Ecuadorian national.
24. Respondent, Kevin Joyce, is sued in his official capacity as Sheriff of Cumberland County. He is a legal custodian of Petitioner and has the authority to release him.
25. Respondent, Kristi Noem, is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security ("DHS"). Respondent Noem is responsible for the implementation and enforcement of the Immigration and Nationality Act, and oversees U.S. Immigration and Customs Enforcement, the component agency responsible for Petitioner's detention. Respondent Noem is a legal custodian of Petitioner.
26. Pamela Bondi, Attorney General of the United States, is sued in her official capacity and as the legal representative of the U.S. government.

STATEMENT OF FACTS

1. Petitioner, Gustavo Eladio Gavilanez Espinoza, is an Ecuadorian citizen who entered the United States in 2004. Before detention, Petitioner was residing at [redacted] He is presently detained at Cumberland County Jail, located at 50 County Way, Portland, ME 04102.
2. On November 29, 2025, near a gas station in Hopkinton, Massachusetts, Petitioner was detained by ICE. He was with several co-workers at the time of his detention.
3. He was then placed in removal proceedings and charged under 212(a)(6)(A)(i) of the INA, as an "alien present in the United States without being admitted or paroled, or who arrived in the United States at any time and place other than as designated by the Attorney General." *See* Ex. A, Notice to Appear. Petitioner was further charged under

212(a)(7)(A)(i)(I) as "an immigrant who, at the time of application for admission, [was] not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality as required under the regulations issued by the Attorney General under section 211 (a) of the Act." *See* Ex. A.

4. A Master Calendar Hearing is scheduled for December 31, 2025, at 9:30 AM before the Chelmsford Immigration Court in Chelmsford, Massachusetts.

5. Additionally, a bond hearing has been set for December 18, 2025, at 9:30 AM before the Immigration Court. Based on recent decisions by the Board of Immigration Appeals, especially *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), it is possible that the Immigration Judge will deny jurisdiction over Petitioner's bond case and allow the government to continue detaining Petitioner indefinitely without an opportunity for an independent judge to analyze his custody.

6. The reason for Petitioner's detention remains unclear, especially as he has not yet had an opportunity to be heard by an Immigration Judge to consider the reasons for his detention.

7. Petitioner's detention violates both the Fourth and Fifth Amendments of the U.S. Constitution.

LEGAL FRAMEWORK

8. The Immigration and Nationality Act (INA) establishes the statutory framework governing the entry, presence, and removal of noncitizens in the United States. Regulations promulgated by the agencies charged with enforcing the INA set forth

specific procedures for classifying noncitizens. When a noncitizen arrives at the border seeking entry into the United States, they are deemed an "applicant for admission." The INA defines several grounds of "inadmissibility." For example, a noncitizen who arrives at a port of entry without being admitted or paroled – such as Petitioner – may be found inadmissible pursuant to 8 U.S.C. § 1182(a)(6)(A)(i).

9. Under 8 U.S. Code § 1225, "An alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters) shall be deemed for purposes of this chapter an applicant for admission." Applicants for admission are among the individuals who can be placed in expedited removal, in which case they are subject to mandatory detention. INA § 235(b)(1)(B)(i)(IV).

10. If an applicant for admission is not placed in expedited removal proceedings under INA § 235 or is later placed in removal proceedings under INA § 240, detention is no longer mandatory. In these cases, noncitizens are sometimes released from custody and allowed to remain in the United States for the duration of their proceedings. 8 U.S. Code § 1226(a).

11. Recently, however, Immigration Courts have shifted their long-standing interpretation, holding that they lack jurisdiction to conduct custody redeterminations for individuals who were placed in proceedings upon arrival, later released into the United States, and then detained years afterward for a different reason. Recent decisions by the Board of Immigration Appeals ("BIA") have stripped Immigration Judges of jurisdiction over these cases. *See Matter of Q. LI*, 29 I&N Dec. 66 (BIA 2025); *see also Matter of Yajure*

Hurtado, 29 I&N Dec. 216 (BIA 2025). The latter decision is based on a position that every individual who unlawfully entered the U.S. is an "applicant for admission."

12. The recent interpretation by the BIA, which was adopted after a novel interpretation of the law by DHS, violates the Fifth Amendment, and is also contrary "to the plain text of the statute and the overall statutory scheme." *Aguiriano Romero v. Hyde*, No. 25-cv-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *also Diaz Martinez v. Hyde*, — F. Supp. 3d —, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rodriguez Vazquez v. Bostock*, — F. Supp. 3d —, 2025 WL 1193850 (W.D. Wash. Apr. 24, 2025) (holding same); *Gomes v. Hyde*, 2025 WL 1869299 (D. Mass. July 7, 2025) (same); *Garcia v. Hyde*, Civ. No. 25-11513 (D. Mass. July 14, 2025) (same); *Rosado v. Bondi*, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025) (same), *report and recommendation adopted without objection*, 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, — F. Supp. 3d —, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025) (same); *dos Santos v. Lyons*, 2025 WL 2370988 (D. Mass Aug. 14, 2025) (same); *Aguilar Maldonado v. Olson*, 2025 WL 2374411 (D. Minn. Aug. 15, 2025) (same); *Escalante v. Bondi*, 2025 WL 2212104 (D. Minn. July 31, 2025) (granting preliminary relief after positively weighing likelihood of success), *report and recommendation adopted sub nom. O. E. v. Bondi*, 2025 WL 2235056 (D. Minn. Aug. 4, 2025); *Arrazola-Gonzalez v. Noem*, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025) (granting individualized bond hearings on *ex parte* motion for temporary restraining order after finding likelihood of success); *Garcia Jimenez v. Kramer*, 2025 WL 2374223 (D. Neb. Aug. 14, 2025) (granting relief from stay of bond order pending BIA appeal); *Mayo Anicasio v. Kramer*, 2025 WL 2374224 (D. Neb. Aug. 14, 2025) (same); *Rodrigues De Oliveira v. Joyce*, 2025 WL

1826118 (D. Me. July 2, 2025) (recognizing disagreement as to the detention statutes and granting habeas petition on due process grounds). *But see Pena v. Hyde*, 2025 WL 2108913 (D. Mass. July 28, 2025).

13. In *Lazaro Maldonado Bautista v. Ernesto Santacruz Jr*, 5:25-cv-01873, (C.D. Cal. 2025), the petitioners sought declaratory relief and vacatur against the federal government's immigration policies for two proposed classes, including a "Bond Eligible Class" with the following characteristics:

> All noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination. *Lazaro Maldonado Bautista v. Ernesto Santacruz Jr*, 5:25-cv-01873, Order at 2 (C.D. Cal. Nov. 25, 2025).

14. The respondents suggested that 8 U.S.C. § 1252(e)(1)(B) precluded class certification in that matter, as that provision limits judicial review by preventing courts from "certify[ing] a class under Rule 23...in any action for which judicial review is authorized under a subsequent paragraph of this subsection." *Lazaro Maldonado Bautista v. Ernesto Santacruz Jr*, 5:25-cv-01873, Order at 4 (C.D. Cal. Nov. 25, 2025) (citing § 1252(e)(1)(B). The respondents pointed to § 1252(e)(3)(A), which limits "[j]udicial review of determinations under section 1225(b) of this title and its implementation is available in an action instituted in the United States District Court for the District of Columbia," and limits challenges to the constitutionality of a section or regulation, or whether certain regulations, policies, or procedures are inconsistent with the INA or violates other laws. *Lazaro Maldonado Bautista v. Ernesto Santacruz Jr*, 5:25-cv-01873, Order at 4 (C.D. Cal. Nov. 25, 2025) (citing § 1252(e)(3)(A)).

15. However, the District Court for the Central District of California observed that this argument proffered by the respondents assumed that the petitioners were challenging an alleged new policy that "all [noncitizens] who entered the United States without inspection are subject to mandatory detention under § 1225(b)(2)(A)." *Id.* at 4-5. In fact, the petitioners had maintained a position that "**they [were] detained under § 1226 and...therefore entitled to receive bond hearings rather than remain in mandatory detention.**" *Id.* at 5 (emphasis added). The Court concluded that "[b]ecause the premise of Petitioners' claim is that the proper governing authority over their detention is § 1226 rather than § 1225," § 1252(e)(3)(A) did not prohibit it from ruling on the petitioners' motion. *Id.*

16. Turning to the requirements of Rule 23(a) for class membership purposes,[2] the Court found that numerosity had been satisfied, "given the factual circumstances surrounding the putative class members and geographic scope of the proposed class." *Lazaro Maldonado Bautista v. Ernesto Santacruz Jr*, 5:25-cv-01873, Order at 5 (C.D. Cal. Nov. 25, 2025) (citing to introduced evidence suggesting that "at a minimum there are thousands of Bond Eligible Class members").

17. Regarding the question of commonality, the Court acknowledged the respondents' argument that the aforementioned proposed class lacked commonality because of alleged "obvious differences between purported class members" requiring different

2 A party seeking class certification must demonstrate the following prerequisites under Rule 23(a): "(1) numerosity of plaintiffs; (2) common questions of law or fact predominate; (3) the named plaintiff's claims and defenses are typical; and (4) the named plaintiff can adequately protect the interests of the class." *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir.1992) (citing Fed.R.Civ.P. 23(a)). The party may not rest on mere allegations but must provide facts to satisfy these requirements. *Doninger v. Pac. Northwest Bell, Inc.*, 564 F.2d 1304, 1309 (9th Cir.1977).

answers depending on individualized circumstances. *Id.* at 6-7. However, it did not find such a difference among the class members:

> Although it is possible that individuals may have differing charges of inadmissibility when they are arrested, the deprivation of their right to a bond hearing is a common injury…[which] can be resolved in a single stroke upon the determination that the new DHS policy is in violation of their due process rights. *Id.* at 7 (citing *Rodriguez v. Hayes*, 591 F.3d 1105 (9th Cir. 2010) (describing commonality as "look[ing] only for some shared legal issue or a common core of facts")).

18. Additionally, the Court declared that "[a]s a matter of law, **Respondents' interpretation runs counter to the plain language of the INA, foundational principles of statutory interpretation, and the INA's statutory scheme**." *Id.* (emphasis added). Thus, the Court concluded that in the matter of commonality, "the interpretive consequences of Respondents' interpretation and corresponding agency practices stemming from that interpretation injure Petitioners and putative class members in a common manner." *Id.*

19. The Court reached a similar conclusion on the question of typicality:

> Petitioners and the putative class members face essentially identical factual circumstances that satisfy typicality. Petitioners arrived in the United States without inspection...They were later arrested and detained at an ICE Processing Center and were denied bond hearings by an IJ, who claimed a lack of jurisdiction...At the time of their arrest, Petitioners were charged inadmissible under grounds that did not place them under mandatory detention as required by § 1225(b)(1), § 1226(c), or § 1231...Despite this, Petitioners remained in detention until the Court granted their TRO...After the TRO, Petitioners were granted individualized bond hearings...Much like the Petitioners, putative class members are noncitizens who already arrived in the United States without inspection, or will enter the United States and not face inspection...In other words, putative class members are inadmissible, but not subject to mandatory detention under § 1225(b)(1), § 1226(c), or § 1231. *Id.* at 8-9.

20. In light of these similarities, the Court declared that "**[w]here those individuals are subject to mandatory detention due to Respondents' improper interpretation of**

the INA, Petitioners' claims present the same circumstances as those of the Bond Eligible Class." *Id.* at 9. (emphasis added).

21. The Court also addressed the question of whether the proposed class was appropriate for certification under Rule 23(b)(2). *Id.* at 11. It noted as a preliminary matter that a previously issued order had already determined that "**Respondents' interpretation of the INA cannot be squared with the statutory text and statutory scheme, and articulated the proper interpretation of the INA that applies to Petitioners.**" *Id.* (citing to Dkt. No. 81) (emphasis added).

22. The respondents had raised two arguments to oppose class certification: "(1) that § 1252(f)(1) prohibit[ed] the requested class wide relief, and (2) that the requested relief [would] not address the Bond Eligible Class's injuries as a whole." *Id.* at 12.

23. Addressing the first argument, the Court noted that the respondents insisted that the requested declaratory relief would interfere with the Government's efforts to detain noncitizens under § 1225(b)(2), which would be "impermissibly coercive." *Id.* The Court looked to the Supreme Court's holding in *Steffel v. Thompson*, 415 U.S. 452, 471 (1974), in which the latter acknowledged that a declaratory judgment, "[t]hough it may be persuasive, . . . is not ultimately coercive." *Lazaro Maldonado Bautista v. Ernesto Santacruz Jr*, 5:25-cv-01873, Order at 12 (C.D. Cal. Nov. 25, 2025). The Court also observed that the statutory text "further support[ed] the availability of classwide declaratory relief." *Id.* (comparing § 1252(e)(1)(A) (prohibiting courts from entering "declaratory, injunctive, or other equitable relief" in any action to exclude under § 1225(b)(1)) with § 1252(f)(1) (specifically noting that this subsection is a "[l]imit on injunctive relief")).

24. Finally, the Court addressed the respondents' argument that class wide declaratory relief would not be appropriate, as "the relief sought would not be uniform and applicable to all class members." *Id.* More specifically, the respondents suggested that the class definition "dr[ew] no clear distinctions between [noncitizens] entering without inspection and [noncitizens] present without inspection such that no single declaratory judgment would cover all putative class members." *Id.*

25. The Court observed that its preceding order[3] had already clarified two important concerns: "(1) **that Respondents' interpretation of the INA is incorrect; and (2) the relief requested by Petitioners would merely make available to Petitioners and putative class members the statutory protections imbued by the INA.**" *Id.* at 13 (emphasis added). The Court therefore found the accessibility of the INA's statutory protections to noncitizens to be uniform. *Id.*

26. In its reasoning, the Court clearly articulated the egregious wrongs that would be corrected by the proposed relief for respective class members:

> Where the DHS policy renders all of the Bond Eligible Class subject to mandatory detention under § 1225(b)(2), the putative class members have been deprived of their right to a bond hearing under § 1226(a)...The declaratory relief requested—a ruling that the policy violates Petitioners' and putative class members' statutory and constitutional rights—would provide the entire class with relief from continued deprivation of their rights...[T]he proper interpretation of the INA preserves a noncitizen's right to an individualized bond hearing after arrest...Respondents have failed, on a systemic basis, to provide Petitioners and putative class members with the necessary safeguards imbued by the INA in violation of their rights. *Id.* at 13-14.

27. Therefore, the District Court for the Central District of California decided to certify the aforementioned "Bond Eligible Class" as to the petitioners' claims that the DHS Policy

[3] Citing to Dkt. 81.

violates the INA and Due Process. *Id.* at 15. A nationwide class certification order has since gone into effect.[4] However, multiple Immigration Judges are reported to have still found no jurisdiction for bond hearings, in defiance of *Maldonado Bautista*.

28. Upon Petitioner's entry, he was neither placed into expedited removal proceedings nor held pending the outcome of such proceedings. The record reflects that, on November 29, 2025, Petitioner was served with a Notice to Appear and placed in removal proceedings pursuant to 8 U.S.C. § 1229. *See* Ex. A, Notice to Appear.

29. Nonetheless, Petitioner has been detained and will likely be denied an opportunity to have a bond hearing before the immigration court based on a novel interpretation by DHS and DOJ that all individuals who entered the United States unlawfully are considered to be "applicants for admission" and therefore subject to mandatory detention.

30. Indeed, mandatory detention for all applicants has only been the official policy of DHS since July 8, 2025, when Acting Director of U.S. Immigration and Customs Enforcement, Todd M. Lyons, issued an internal memorandum explaining that the agency had "revisited its legal position."[5] *See Martinez v. Hyde*, No. CV 25-11613-BEM, 2025 WL 2084238.

31. Recently, the BIA, which ultimately operates under the DOJ's authority, has agreed with that interpretation in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). One of the measures of the current administration was to reduce the number of judges

[4] *Federal Court Grants Nationwide Class Certification and Bond Eligibility for Thousands in Landmark Maldonado Bautista Decision*, WR Immigration, Nov. 26, 2025 (available at https://wolfsdorf.com/federal-court-grants-nationwide-class-certification-and-bond-eligibility-for-thousands-in-landmark-maldonado-bautista-decision/.)

[5] The existence of the memorandum was first reported by the Washington Post on July 14, 2025. Maria Sacchetti & Carol D. Leonnig, *ICE declares millions of undocumented immigrants ineligible for bond hearings*.

at the BIA from 28 to 15, ensuring that most of the judges currently at the board were appointed by the administration, either in this term or in the prior one.[6][7]

32. The internal memorandum discussing the change in interpretation indicates that the decision to strip immigration judges of jurisdiction over bond hearings was made "in coordination with the DOJ," affirming that section 1225 "is the applicable immigration detention authority for all applicants for admission."[8] Former immigration judges have, in fact, reported that they were "told to rule in a certain way" by superiors, and there was "pressure from above."[9]

33. Regardless of the reasons for the change in interpretation by both the DHS and the DOJ, the present issue is that this change is not aligned with the statute, the jurisprudence, or the protections established in the Constitution. Respondents' interpretation violates federal law and due process protections.

34. This position would render significant portions of 8 U.S.C. § 1226 meaningless, violating one of the most basic canons governing the interpretation of federal statutes: that 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 ..." *Corley v. United States*, 556 U.S. 303, 314 (2009) (internal quotations omitted); *Shulman v. Kaplan*, 58 F.4th 404, 410-11 (9th Cir. 2023). "This principle ... applies to interpreting any two

[6] *Reducing the Size of the Board of Immigration Appeals*, 90 Fed. Reg. 15,525 (Apr. 14, 2025).
[7] Adriel Orozco, *While Federal Firings Focus on Immigration Processing, Funding for Immigration Enforcement Expands*, AM. IMMIGRATION COUNCIL (Mar. 6, 2025), https://www.americanimmigrationcouncil.org/blog/federal-firings-immigration-processing-enforcement-expands/
[8] *See Diaz Martinez*, 2025 WL 2084238, at *4 & nn.10–11 (citing Acting ICE Director Todd M. Lyons's July 8, 2025, memorandum, "Interim Guidance Regarding Detention Authority for Applicants for Admission").
[9] Oscar Margain, *Fired immigration judges describe threat to judicial independence from Justice Dept.*, NBC BOSTON, https://www.nbcboston.com/news/local/fired-us-immigration-judge-interviews/3776340/ (July 25, 2025).

provisions in the U.S. Code, even when Congress enacted the provisions at different times." *Bilski v. Kappos*, 561 U.S. 593, 607-8 (2010).

35. The DOJ and DHS position is that Petitioner is subject to mandatory detention provisions, and he should be detained until the finality of his removal proceedings without the opportunity to have a bond hearing, regardless of the circumstances of his case. If their interpretation of § 1225 is correct and this section's mandatory detention provisions apply to all noncitizens present in the United States who have not been admitted, it would render superfluous provisions of § 1226 that apply to certain categories of inadmissible noncitizens. *See* § 1226(c)(1)(A), (D), (E); *Shulman v. Kaplan*, 58 F.4th 404, 410-11 (9th Cir. 2023); *Torres v. Barr*, 976 F.3d 918, 930 (9th Cir. 2020).

36. Under Respondents' proposed interpretation, § 1226(c)(1)(E)'s mandated detention for inadmissible noncitizens who are implicated in an enumerated crime, including those "present in the United States without being admitted or paroled," would be meaningless and superfluous because "all noncitizens who have not been admitted" would already be governed by § 1225's mandatory detention authority. *See Shulman*, 58 F.4th at 410-11; *see also Corley v. United States*, 556 U.S. 303, 314 (2009) (explaining that seemingly conflicting statutes read in isolation can be reconciled if read in their broader context, which includes observing the "anti-superfluousness" canon).

37. The Supreme Court's decision in *Jennings v. Rodriguez* likewise supports harmonizing §§ 1225 and 1226 in a manner contrary to Respondents' position. The Court described § 1225 as part of the process that "generally begins 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*, 138 S. Ct. 830, 836 (2018). In contrast, the Court explained that § 1226 governs "the process of arresting and detaining" noncitizens who are living "inside the United States" but "may still be removed," including those "who were inadmissible at the time of entry." *Id.* at 837. The Court summarized the distinction succinctly: "U.S. immigration law authorizes the Government to detain certain [noncitizens] seeking admission into the country under §§ 1225(b)(1) and (b)(2). It also authorizes the Government to detain certain [noncitizens] already in the country pending the outcome of removal proceedings under §§ 1226(a) and (c)." *Id.* at 838.

38. Notably, several of the exceptions in § 1226(c) that would be rendered superfluous under the IJ's interpretation of §§ 1225 and 1226 were only recently enacted by Congress in the Laken Riley Act ("LRA"). "When Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect." *Stone v. INS*, 514 U.S. 386, 397 (1995) (citation omitted). Enacted in January 2025, the LRA amended multiple INA provisions, including §§ 1226 and 1225. *See* LRA, Pub. L. No. 119-1, 139 Stat. 3 (2025). Pertinent here, the LRA added a new category of noncitizens to § 1226(c)'s mandatory detention authority—those deemed inadmissible, including for being "present in the United States without being admitted or paroled," who have been arrested, charged with, or convicted of certain crimes. 8 U.S.C. § 1226(c)(1)(E); LRA, Pub. L. No. 119-1. By specifically excepting these criminally implicated inadmissible noncitizens from § 1226(a)'s default discretionary detention framework, Congress necessarily left all other inadmissible noncitizens—those without the specified criminal involvement—subject to § 1226(a). *See Jennings*, 583 U.S. at 837.

39. Additionally, Congress enacted the LRA in the context of the longstanding agency practice of applying § 1226(a) to inadmissible noncitizens already residing in the country. Another "customary interpretive tool" is the principle that "[w]hen Congress adopts a new law against the backdrop of a 'longstanding administrative construction,'" courts "generally presume[] the new provision should be understood to work in harmony with what has come before." *Monsalvo Velazquez v. Bondi*, 604 U.S. ___, 145 S. Ct. 1232, 1242 (2025) (quoting *Haig v. Agee*, 453 U.S. 280, 297–98 (1981)).

40. In *Monsalvo Velazquez*, the Court emphasized that when a statute is "susceptible" to more than one reasonable interpretation, courts should adopt the reading that is "consistent" with the statute's "longstanding administrative construction." *Id.* Congress's amendments to § 1226(c) in the LRA were made with full awareness of decades of agency practice treating inadmissible noncitizens – such as Petitioner – under § 1226(a)'s discretionary detention framework. Congress, therefore, presumably intended to preserve "the same understanding" of the statute as had been consistently applied by the agency.

41. Prior to the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"), the predecessor to § 1226(a) governed deportation proceedings for all noncitizens arrested within the United States. *See* 8 U.S.C. § 1252(a)(1) (1994) ("Pending a determination of deportability ... any [noncitizen] ... may, upon warrant of the Attorney General, be arrested and taken into custody."); *Hose v. INS*, 180 F.3d 992, 994 (9th Cir. 1999) (noting that a "deportation hearing" was the "usual means" of proceeding against a noncitizen physically present in the United States). Like § 1226(a), the predecessor statute authorized discretionary release on bond. *See* 8 U.S.C.

§ 1252(a)(1) (1994). When Congress enacted IIRIRA, it expressly stated that § 1226(a) "restates the current provisions in [the predecessor statute] regarding the authority of the Attorney General to arrest, detain, and release on bond" a noncitizen "who is not lawfully in the United States." H.R. Rep. No. 104-469, pt. 1, at 229; *see also* H.R. Rep. No. 104-828, at 210. Because noncitizens in Petitioner's position were entitled to discretionary detention under the predecessor statute, and Congress confirmed that IIRIRA did not narrow that authority, § 1226 should likewise be interpreted to allow discretionary release on bond for similarly situated noncitizens.

42. Respondents' interpretation of § 1226 is also undermined by DHS's longstanding practice of treating noncitizens taken into custody while residing in the United States as detained under § 1226(a). *See Loper Bright Enter. v. Raimondo*, 144 S.Ct. 2244, 2258 (2024). "[T]he longstanding practice of the government—like any other interpretive aid—can inform [a court's] determination of what the law is." *Id.* (internal quotations omitted, second brackets in original). The Supreme Court has further recognized that deference to executive interpretations of federal statutes is "especially warranted when [the interpretation] was issued roughly contemporaneously with enactment of the statute and remained consistent over time." *Id.* This principle is particularly compelling here, where an individual who has resided in the United States with the government's acquiescence is subjected to an infringement of liberty interests – discussed *infra* – solely due to a regime change seeking to expedite removal of non-criminal noncitizens under discretionary conditions.

43. Furthermore, DHS's and DOJ's selective reading of the statute – which disregards its "seeking admission" language – violates the rule against surplusage and undermines

the plain meaning of the text. *See United States ex rel. Polansky v. Exec. Health Res., Inc.*, 143 S.Ct. 1720, 1731 (2023) ("'[E]very clause and word of a statute' should have meaning.") (quoting *Montclair v. Ramsdell*, 107 U.S. 147, 152 (1883)); *United States v. Abbas*, 100 F.4th 267, 283 (1st Cir. 2024) ("'We begin, as always, with the text of the statute' and read it 'according to its plain meaning at the time of enactment'") (quoting *United States v. Winczuk*, 67 F.4th 11, 16 (1st Cir. 2023), cert. denied, 145 S. Ct. 319 (2024)). The statutory phrase "seeking admission" is not explicitly defined but necessarily conveys a present-tense, ongoing action. *See Matter of M-D-C-V-*, 28 I.&N. Dec. 18, 23 (B.I.A. 2020) ("The 'use of the present progressive, like use of the present participle, denotes an ongoing process,'") (quoting *Al Otro Lado v. Wolf*, 952 F.3d 999, 1011–12 (9th Cir. 2020)).

44. Both the BIA's jurisdictional determination and Petitioner's continued detention, absent a hearing to determine whether he poses a danger to persons or property or is likely to appear for future proceedings, are contrary to the laws of the United States.

CLAIMS FOR RELIEF

COUNT ONE

Violation of Fifth Amendment Right to Due Process

45. Petitioner's detention by DHS violates his rights under the Due Process Clause of the Fifth Amendment to the United States Constitution. The allegations in the above paragraphs are re-alleged and incorporated herein. Immigration detention violates due process if it is not reasonably related to the purpose of ensuring a noncitizen's removal from the United States. *See Zadvydas v. Davis*, 533 U.S. 678, 690-92, 699-700 (2001); *Jackson v. Indiana*, 406 U.S. 715, 738 (1972). Where removal is not reasonably

foreseeable, detention cannot be reasonably related to the purpose of effectuating removal and is unlawful. *See id.* at 699-700.

46. The Supreme Court has also established that noncitizens in deportation or removal proceedings are just as entitled to due process protections as anyone else. *See Zadvydas*, 533 U.S. at 690 (2001) ("A statute permitting indefinite detention of an alien would raise a serious constitutional problem. The Fifth Amendment's Due Process Clause forbids the Government to 'depriv[e]" any "person . . . of . . . liberty . . . without due process of law.'")

47. In *Jennings v. Rodriguez,* the Supreme Court makes a clear distinction between noncitizens who are detained while entering the country and noncitizens who are already present in the United States. *Jennings v. Rodriguez*, 138 S.Ct. 830 (2018). The opinion of the Court recognizes that **"§ 1226 applies to aliens already present in the United States. . . ." and that "§ 1226(a) authorizes the Attorney General to arrest and detain an alien 'pending a decision on whether the alien is to be removed from the United States.'"** *Id.* at 836, 847. As long as the detained alien is not covered by § 1226(c), the Attorney General "may release" the alien on "bond . . . or conditional parole." *Id.* at 847. Furthermore, Federal regulations provide that aliens detained under § 1226(a) receive bond hearings at the outset of detention. *Id.* (citing 8 CFR §§ 236.1(d)(1), 1236.1(d)(1)).

48. This understanding has long been supported by the Supreme Court, indicating that noncitizens have fewer protections in their initial entry.

49. In *Nishimura Ekiu*, the Court clarifies that arriving aliens are only individuals who have never been to the U.S., holding that the term applies to "foreigners who have never

been naturalized, nor acquired any domicile or residence within the United States, nor even been admitted into the country pursuant to law." See Nishimura Ekiu v. United States, 142 U.S. 651, 660 (1892).

50. In *Landon v. Plasencia*, the Court held that an alien seeking initial admission to the United States requests a privilege and is therefore afforded fewer constitutional rights. 459 U.S. 21, 32 (1982).

51. In *Shaughnessy v. United States Mezei,* the Court again ratifies that the different protections are for those "on the threshold of initial entry." 345 U.S. 206, 212 (1953).

52. In *Dep't of Homeland Sec. v. Thuraissigiam*, the Court reinforces the limited protections for individuals seeking initial entry to the United States. 140 S.Ct. 1959, 1964 (2020).

53. In *United States v. Flores-Montano,* the Supreme Court reiterated that the power over immigration is "at its zenith at the international border." 541 U.S. 149, 152 (2004).

54. Therefore, there is no question that the Supreme Court has long recognized a distinction between those who are arrested at the border trying to enter the country and those arrested while in the country.

55. The ultimate question is whether noncitizens who have resided in the United States for at least several years are entitled to fundamental due process protections, including a hearing before an independent adjudicator to determine the lawfulness of their detention. There are numerous legal arguments to support the conclusion that they are entitled to such rights. Beyond the technical legal analysis, however, it is also a matter of basic fairness and common sense: all individuals, regardless of immigration status, are entitled to fundamental protections of liberty:

> Were it true that "arriving" noncitizens have no due process rights, it would mean that such individuals – including those living freely among us on parole – could "be subjected to the punishment of hard labor without a judicial trial." *Clerveaux*, 397 F. Supp. 3d at 316 (quoting *Zadvydas v. Davis*, 533 U.S. 678, 704 (2001) (Scalia, J., dissenting)). And it would mean that a noncitizen living here on parole could be taken into custody and beaten by local police without any violation of the Fourth Amendment. That cannot be the law. *Mata Velasquez v. Kurzdorfer*, No. 25-CV-493, 2025 WL 1953796, at *16 (W.D.N.Y. July 16, 2025).

56. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Zadvydas*, 533 U.S. at 690. Being free from physical detention is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). "[W]hile [DHS] might want to enforce this country's immigration laws efficiently, it cannot do that at the expense of fairness and due process." *Ceesay v. Kurzdorfer*, No. 25-CV-267, 2025 WL 1284720 (W.D.N.Y. 2025), at *1. Furthermore, "there is something fundamentally unfair about the government's changing the rules by fiat simply because it wants to. That is arbitrary by definition." *Mata Velasquez v. Kurzdorfer*, No. 1:25-cv-493, 2025 WL 1953796 (W.D.N.Y. July 16, 2025). "Luring noncitizens here, paroling them for a period of time, and then telling them 'never mind' is just plain wrong – made even worse when the noncitizens are detained while their cases are heard. And a change in administration does not justify or excuse such fundamental unfairness." *Id.*

57. In the present case, Petitioner's 20+ years of residence in the United States provides him with a protected liberty interest. The government may not unilaterally take away his liberty.

58. The Due Process Clause proscribes the Government's authority to arrest a non-citizen and revoke their release because it is well-established that individuals released from

incarceration have a liberty interest in their freedom. To protect that interest, due process requires notice and a hearing, before any arrest, at which hearing the individual is allowed to advance their arguments as to why their release should not be revoked.

COUNT TWO

Violation of Fourth Amendment Right to Protection from Unreasonable Searches and Seizures by the Government

59. In *United States v. Brignoni–Ponce*, 422 U.S. 873, 95 S.Ct. 2574 (1975), the Supreme Court sought to determine what standard of proof, if any, an immigration officer must apply to stop and detain individuals to investigate their immigration status. *See* 422 U.S. at 880–82, 95 S.Ct. 2574. The Court stated that, just as in the criminal context, an immigration officer "must have a reasonable suspicion" to justify briefly stopping individuals to question them "about their citizenship and immigration status...but any further detention...*must be based on ... probable cause.*" *Id.* at 881–82, 95 S.Ct. 2574 (emphasis added) (citing *Terry v. Ohio*, 392 U.S. 1, at 29, 88 S.Ct. 1868); *see also id.* at 884 ("[T]he Fourth Amendment...forbids stopping or detaining persons for questioning about their citizenship on less than a reasonable suspicion that they may be aliens.").

60. Petitioner's arrest, which led to his subsequent detention, was unlawful and in violation of his rights under the Fourth Amendment to the United States Constitution.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

(1) Assume jurisdiction over this matter.

(2) Issue an Order to Show Cause, pursuant to 28 U.S.C. § 2243, ordering Respondents to show cause why the Petition should not be granted within three days.

(3) Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment, as well as the Fourth Amendment;

(4) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately.

(5) Issue a Restraining Order preventing Respondents from moving Petitioner out of Maine;

(6) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and

(7) Grant any further relief this Court deems just and proper.

Respectfully submitted,

/s/ Timothy Caron
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Dated: December 16, 2025

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner Gustavo Eladio Gavilanez Espinoza, and I 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 this 16th day of December 2025.

/s/ Timothy Caron
Timothy Caron, Esq.

CERTIFICATE OF SERVICE

I, Timothy Caron, hereby certify that this document filed through the CM/ECF system will be sent electronically to the registered participants as identified on the NEF (NEF) and paper copies will be sent to those indicated as non-registered participants.

Dated: December 12, 2025

/s/ Timothy Caron
Timothy Caron, Esq.