UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

FREDY ALEXANDER GARCIA GARCIA,

Petitioner-Plaintiff,

v.

PAMELA BONDI, in her official capacity as U.S. Attorney General;

KRISTI NOEM, in her official capacity as Secretary of the U.S. Department of Homeland Security;

TODD LYONS, in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement;

MATHEW W. BAKER, in his official capacity as Acting Field Office Director of the Houston Office of U.S. Immigration and Customs Enforcement;

MARTIN FRINK, in his official capacity as Warden of the Houston Contract Detention Facility;

Defendant-Respondents

Civil Action No. _____

ORAL ARGUMENT REQUESTED

EXPEDITED HEARING REQUESTED

PETITIONER-PLAINTIFF FREDY ALEXANDER GARCIA GARCIA'S PETITION FOR A WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner-Plaintiff Fredy Alexander Garcia Garcia ("Petitioner" or "Mr. Garcia"), a twenty-year old Guatemalan asylum seeker, is being unlawfully detained by the U.S. Department of Homeland Security ("DHS"), through U.S. Immigration and Customs Enforcement ("ICE"), in violation of his statutory and constitutional rights. This Petition seeks Mr. Garcia's release from unlawful detention.

2. For nearly a decade, Mr. Garcia has lived in the United States and fully complied with every requirement of his ongoing immigration proceedings: he pursued asylum diligently, obtained work authorization, and attended scheduled hearings. Mr. Garcia has also complied with Respondents in their efforts to effectuate his current arrest and detention. He poses no flight risk and no danger to the community.

3. Despite this, ICE has repeatedly denied all requests for release, continues to hold Mr. Garcia in their custody indefinitely without a custody determination, and has failed to provide *any* lawful basis for his continued detention.

4. This is unlawful under the Immigration and Nationality Act ("INA") and violates Mr. Garcia's right to due process.

5. *First*, as a noncitizen physically present in the United States, Mr. Garcia's detention can only be governed by 8 U.S.C. § 1226 (Section 236 of the INA) (hereinafter "Section 1226").[1] Critically, Section 1226(a) permits the discretionary detention of only noncitizens present in the country who receive an individualized determination of their potential for posing a flight risk or danger to the community. Because Mr. Garcia has not received such determination, his continued

[1] Throughout this Petition, INA Section 235 and subsections thereof are referred to interchangeably with the corresponding section of the U.S. Code, which is 8 U.S.C. § 1225. Similarly, INA Section 236 and subsections thereof are referred to interchangeably with the corresponding section of the U.S. Code, which is 8 U.S.C. § 1226.

detention is unlawful. He must be afforded a prompt bond hearing and an individualized custody determination by a neutral decisionmaker pursuant to Section 1226(a), or he must be released immediately.

6. DHS, through an ICE attorney representing the government, has filed Form I-213, Record of Deportable/Inadmissible Alien which states that Mr. Garcia "will remain in ICE custody pending an Immigration court hearing." While Mr. Garcia sought and attended a bond hearing, the reviewing Immigration Judge, Andrew Caborn, found the court lacked jurisdiction to make a custody determination due to ICE's novel and legally unsupported policy of applying "mandatory" detention to all noncitizens with long-term presence in the interior. *See Matter of Yajure Hurtado,* 29 I&N Dec. 216 (BIA 2025) ("*Yajure Hurtado*"). As a result, the court did not address or consider the merits of Mr. Garcia's bond request. So, while Mr. Garcia attended a bond hearing, there still has been no individualized determination of his potential for posing a flight risk or danger to the community as required under Section 1226(a).

7. It is likely that any appeal to the Board of Immigration Appeals ("BIA") will be denied on the same basis that the Immigration Court lacks jurisdiction under *Yajure Hurtado*. Thus, exhaustion of administrative remedies prior to filing this Petition should be waived as futile and, in any event, is not a statutory requirement.

8. *Second,* Mr. Garcia's detention violates the Fifth Amendment's guarantee that no person shall be deprived of liberty without due process of law. Mr. Garcia's fundamental liberty interest is at stake. The risk of erroneous deprivation through unjustified detention is severe, while the government's burden to provide a bond hearing is minimal. Freedom from physical restraint is a core right, and discretionary civil immigration detention is constitutional only to prevent flight or mitigate the risks of danger to the community. Neither justification applies here.

9. DHS has allowed Mr. Garcia to remain at liberty on his own recognizance for nine years, indicating that it *never* viewed Mr. Garcia as a flight risk or danger to the community. Those circumstances have not changed. The facts demonstrate that Mr. Garcia is a valued member of the community who has never been involved in any violent activity or altercation. He has never had any dealings with drugs, firearms, or violence. His current detention, based on a single arrest for alleged public intoxication, is arbitrary and unlawful. ICE has provided no individualized determination and no statutory authority for Mr. Garcia's confinement, despite repeated requests from Mr. Garcia for such authority. Accordingly, Respondents have violated Mr. Garcia's procedural and substantive due process rights.

10. Mr. Garcia suffers irreparable harm with each day he is subjected to detention. Immediate judicial intervention is essential to end ongoing violations of his rights, restore his liberty, and reunite him with his family and community. Accordingly, Mr. Garcia seeks a writ of habeas corpus ordering his immediate release and prohibiting transfer outside this District while this action is pending.

JURISDICTION & VENUE

11. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 2241 (habeas corpus), and 8 U.S.C. § 1252(e)(2) (judicial review of habeas corpus proceedings).

12. Venue is proper in the Southern District of Texas under 28 U.S.C. § 1391(b) and (e) because a substantial part of the events giving rise to these claims occurred in this district. Venue is also proper under 28 U.S.C. § 2241(d) because Mr. Garcia is detained at a facility within this district.

13. To the extent Respondents may transfer Mr. Garcia outside this District, such transfer would be undertaken to defeat this Court's jurisdiction. The Court retains authority to

enjoin any such transfer and to order Mr. Garcia's release. *See, e.g.*, *Pineda Parada v. Rice*, 2025 WL 3146250, at *3 (W.D. La. Nov. 4, 2025) (granting habeas petition, enjoining transfer of petitioner, and ordering a bond hearing or release); *Granados v. Noem*, 2025 WL 3296314, at *7 (W.D. Tex. Nov. 26, 2025) (granting habeas petition and ordering release); *Buenrostro-Mendez v. Bondi*, 2025 WL 2886346, at *4 (S.D. Tex. Oct. 7, 2025) (granting habeas petition and ordering a bond hearing or release).

14. This Court has authority to grant declaratory and injunctive relief, 28 U.S.C. §§ 2201, 2202, and to issue and enforce the writ of habeas corpus, U.S. Const. art. I, § 9, cl. 2 and 28 U.S.C. § 1651.

15. Exhaustion of administrative remedies is not required by statute and is unnecessary here. Further attempts to request administrative relief, including appealing Judge Caborn's order stating that the immigration judge does not have jurisdiction to hear the merits of Mr. Garcia's bond motion, would be futile given the immigration judges' recent blanket rejection of immigration detainees' bond requests. *See Buenrostro-Mendez*, 2025 WL 2886346, at *3; Section IV, *infra*.

PARTIES

16. Petitioner Fredy Alexander Garcia Garcia is lawfully present as an applicant for asylum, withholding of removal, and protection under the Convention Against Torture. Mr. Garcia has resided continuously in the United States for nine years. He has remained in the custody of DHS since approximately October 27, 2025. He is in the custody, and under the direct control, of Respondents and their agents at the Houston Contract Detention Facility, in Houston, Texas.

17. Respondent Pamela Bondi is named in her official capacity as the U.S. Attorney General. In this capacity, Attorney General Bondi is responsible for administration of the immigration laws as exercised by the Executive Office for Immigration Review, including

immigration courts and the Board of Immigration Appeals, pursuant to 8 U.S.C. § 1103(g). She routinely transacts business in the Southern District of Texas and is legally responsible for administering Mr. Garcia's removal and custody redetermination proceedings and the standards used in those proceedings. Respondent Bondi's office is located at the United States Department of Justice, 950 Pennsylvania Avenue, NW, Washington, D.C. 20530.

18. Respondent Kristi Noem is named in her official capacity as the Secretary of the U.S. Department of Homeland Security. In this capacity, Secretary Noem is responsible for the administration of immigration laws pursuant to Section 103(a) of the INA, 8 U.S.C. § 1103(a), she routinely transacts business in the Southern District of Texas, she supervises Respondents Lyons and Baker, she is legally responsible for the pursuit of Mr. Garcia's detention and removal, and, as such, is a legal custodian of Mr. Garcia. Respondent Noem's office is located at the U.S. Department of Homeland Security, 500 12th Street SW, Washington, D.C. 20528.

19. Respondent Todd M. Lyons is named in his official capacity as the Acting Director of U.S. Immigration and Customs Enforcement. In this capacity, Respondent Lyons is responsible for administration of the immigration laws pursuant to Section 103(a) of the INA, 8 U.S.C. § 1103(a), he routinely transacts business in the Southern District of Texas, he supervises Respondent Baker, he is legally responsible for the pursuit of Mr. Garcia's detention and removal, and, as such, is a legal custodian of Mr. Garcia. Respondent Lyons's office is located at the U.S. Department of Homeland Security, 500 12th Street SW, Washington, D.C. 20528.

20. Respondent Mathew Baker is named in his official capacity as the Acting Field Office Director of the Houston Office for U.S. Immigration and Customs Enforcement. In this capacity, Respondent Baker is responsible for the administration of immigration laws and the execution of detention and removal determinations, and, as such, is a legal custodian of Mr. Garcia. Respondent Baker's office is located at 126 Northpoint Drive, Houston, TX 77060.[2]

21. Respondent Martin Frink is named in his official capacity as Warden of the Houston Contract Detention Facility, a federally contracted private incarceration facility located within this District, where Mr. Garcia is currently detained. In his capacity as Warden, Respondent Frink oversees the administration and management of the Houston Contract Detention Facility, and, as such, is a legal custodian of Mr. Garcia. His business address is 15850 Export Plaza Drive, Houston, Texas 77032.

STATEMENT OF FACTS

I. Mr. Garcia, a Lawfully Present Asylum Seeker, Has Lived in Texas for Nearly Ten Years and is a Contributing Member of the Community

22. Mr. Garcia is a twenty-year-old asylum seeker. He was brought to the United States by his father at the age of eleven to [redacted] [redacted] *See* Freeman Decl. at ¶ 3. Mr. Garcia and his father entered the United States without inspection on or around November 14, 2016. *See id.*

23. After entering, Mr. Garcia came to the attention of DHS, and on November 15, 2016, was issued a Warrant for Arrest and Notice of Custody Determination which indicated that he was taken into custody pursuant to Section 1226. Ex. 2,[3] Warrant for Arrest of Alien (Nov. 15, 2016); Ex. 3, Notice of Custody Determination (Nov. 15, 2016). During an interview with border

[2] Respondents Noem, Lyons, and Baker are collectively referred to herein as the "DHS Respondents."

[3] All cited exhibits are exhibits to the Declaration of Madeleine Freeman ("Freeman Decl."), filed herewith.

patrol agents, Mr. Garcia expressed a fear of return to Guatemala, Ex. 4, Record of Deportable/Inadmissible Alien (Nov. 15, 2016), and DHS then issued Mr. Garcia a Notice to Appear ("NTA"), placing him in regular removal proceedings under 8 U.S.C. § 1229a (Section 240 of the INA) (hereinafter "Section 1229a"). Ex. 5, Notice to Appear (Nov. 15, 2016).

24. DHS then released Mr. Garcia on his own recognizance pursuant to Section 1226. Ex. 6, Order of Release on Recognizance (Nov. 16, 2016). Mr. Garcia was permitted to proceed to his residence in Galveston, Texas. *See* Freeman Decl. at ¶ 10.

25. Mr. Garcia subsequently applied for asylum, withholding of removal, and relief under the Convention Against Torture on May 2, 2018. *See id.* at ¶ 11. He applied for, and was granted, work authorization from USCIS on April 8, 2022, which was renewed on January 4, 2025. Ex. 7, Employment Authorization Documents (Apr. 8, 2022 and Jan. 4, 2025). In the time since Mr. Garcia's entry, the DHS Respondents have permitted him to remain at liberty on his own recognizance pending resolution of his asylum and removal proceedings in Houston Immigration Court. *See* Freeman Decl. at ¶¶ 10–13.

26. Mr. Garcia has consistently cooperated with the requirements of the Immigration Court, including by attending his hearings in conjunction with his asylum proceedings. *See id.* at ¶ 13. He testified at a merits hearing for his asylum application on February 23, 2024, more than seven years after he first arrived in the United States. *See id*. While his application for asylum was denied, Mr. Garcia has since timely filed for an appeal, which has been pending since May 23, 2024. *See* Ex. 8, Receipt Notice of EOIR-26, Application for Appeal (May 23, 2024). Mr. Garcia remains lawfully present as an asylum seeker.[4] Accordingly, he should not be detained indefinitely while his asylum case is pending appeal.

[4] Mr. Garcia's time spent in the United States as a minor and while his bona fide asylum application is pending is considered lawful presence. INA § 212(a)(9)(B)(iii)(I)–(II).

27. Mr. Garcia has lived in the United States for nine years. Prior to his detention, he resided with his father, stepmother, stepsister, and half-brother, maintained stable housing, and he consistently appeared at required immigration hearings. *See* Freeman Decl. at ¶ 4. He has held various jobs in Texas over the years in the construction, landscaping, and restaurant industries. Immediately prior to his detention, Mr. Garcia was employed by Fernando Racedo, his U.S. citizen sponsor, to perform construction and remodeling work. *See id.* ¶ 5; Ex. 1, Decl. of Fernando Racedo ("Racedo Decl.") (Nov. 12, 2025) at ¶ 6. Though he received one prior misdemeanor conviction as a juvenile for driving while intoxicated, Mr. Garcia has never had any dealings with drugs, firearms, or violence. During his nine years living in Texas, he has established strong ties with the community, including attending school as a child, working in his community, and consistently engaging with his friends, family, and community members. *See* Freeman Decl. at ¶¶ 4–5; Ex. 1, Racedo Decl. at ¶ 6.

28. When Mr. Garcia first entered the United States in November 2016, DHS chose to place him in regular Section 1229a removal proceedings and permit him to remain at liberty pending a decision on his asylum application. Ex. 5, Notice to Appear; Ex. 6, Order of Release on Recognizance. By doing so, DHS implicitly determined that detention was unnecessary because Mr. Garcia did not pose a flight risk or danger to the community. Since then, Mr. Garcia has complied fully with all requirements imposed by DHS and the immigration court and has actively pursued his claim for asylum with the assistance of pro bono counsel.

II. Mr. Garcia is Unlawfully Detained by Respondents

29. On or about Saturday, October 25, 2025, Mr. Garcia was arrested for the alleged *de minimis* offense of public intoxication by the Galveston Port Police Department. Ex. 9, Incident Report (Oct. 25, 2025). The Galveston Port Police Department's Incident Report provides no

description of any action by Mr. Garcia that led to the arrest, and lists "Jimenez, C." as an "Assisting Officer," presumably referencing ICE Supervisory Detention and Deportation Officer Carlo Jimenez. *Id.* On or about October 27, 2025, Mr. Garcia's bond was posted by ICE, and he was transferred to ICE custody. Ex. 10, Letter of Confinement (Oct. 28, 2025). Mr. Garcia has not been convicted of any crime related to the underlying arrest—and indeed has not yet been arraigned in connection with that arrest—yet ICE has continuously failed to provide an individualized determination justifying his detention. *See* Freeman Decl. at ¶¶ 14, 18–23. Mr. Garcia remains in detention at the Houston Contract Detention Facility.

30. After Mr. Garcia's counsel requested by phone that ICE provide the statutory basis for Mr. Garcia's detention, ICE Supervisory Detention and Deportation Officer Carlo Jimenez emailed counsel stating, "Your client is pending a BIA appeal and will not be released at this time" and provided links to President Trump's 2025 Executive Orders 14159 and 14165, which offer no legal basis for detention but rather proclaim the Trump Administration's commitment to "protecting the American people against invasion" and "securing our borders." Ex. 12, Email from Officer Jimenez (Nov. 5, 2025). That day, Mr. Garcia again requested through his counsel the statutory basis for Mr. Garcia's detention by email. *Id*. ICE failed to respond to that inquiry. *Id.*

31. On November 14, 2025, Mr. Garcia requested, via email and certified mail, that ICE release Mr. Garcia from their custody under conditional parole or upon posting of bond. Ex. 13, Letter to Officer Jimenez Requesting Parole (Nov. 14, 2025); Ex. 12, Email to Officer Jimenez (Nov. 14, 2025). ICE denied this request on November 16, 2025 when ICE Officer Jimenez sent Mr. Garcia's counsel an identical email to his November 5 email, once again stating that Mr. Garcia will not be released given Executive Orders 14159 and 14165, and offering no further explanation. Ex. 12, Email from Officer Jimenez (Nov. 16, 2025).

32. On November 17, Mr. Garcia asked ICE, for the third time, the statutory basis for Mr. Garcia's detention. *Id*. Mr. Garcia's counsel did not receive a response until Officer Jimenez sent a third identical email stating that Mr. Garcia will not be released given Executive Orders 14159 and 14165 and offering no further explanation. Ex. 14, Email from Officer Jimenez (Dec. 8, 2025).

33. At every turn, and despite repeated requests from Mr. Garcia, ICE has failed to provide a warrant for Mr. Garcia's arrest, a notice of his custody determination, or *any* statutory or regulatory basis for his continued detention. As of this filing, Mr. Garcia has been detained for 51 days and still lacks any explanation for the legal basis of his detention.

34. On December 2, 2025, Mr. Garcia submitted a motion for a bond hearing before the Conroe Immigration Court. Ex. 15, Motion for Bond and Custody Redetermination (Dec. 2, 2025). On December 9, 2025, Immigration Judge Caborn held a hearing at which he denied Mr. Garcia's request for custody redetermination due to a lack of jurisdiction. Ex. 16, Order of the Immigration Judge (Dec. 9, 2025). At this hearing, Judge Caborn did not evaluate the merits of Mr. Garcia's potential risk of flight or danger to the community. *See* Freeman Decl. at ¶ 25.

35. On December 17, 2025, while detained by DHS, Mr. Garcia filed this Petition, seeking, *inter alia*, his immediate release from custody.

36. Also, at the time of filing this Petition, Mr. Garcia is concurrently filing a motion for a temporary restraining order and preliminary injunction requesting his immediate release or ability to seek release on bond. Mr. Garcia also respectfully asks that this Court order Respondents not to transfer him outside of the District for the duration of this proceeding.

LEGAL FRAMEWORK

I. Mr. Garcia is Not Subject to Mandatory Detention Under 8 U.S.C. § 1225(b) and May Only Be Detained Pursuant to 8 U.S.C. § 1226(a)

37. Mr. Garcia is currently detained by ICE absent lawful authority. DHS has failed to identify or cite *any* statutory provision under the INA or other governing law that authorizes Mr. Garcia's continued confinement.

38. United States immigration law provides two avenues for detention of noncitizens: through 8 U.S.C. § 1225 (Section 235 of the INA) (hereinafter "Section 1225") and Section 1226 respectively. Section 1225(b) permits mandatory detention in the limited circumstances when a noncitizen qualifies for expedited removal or is apprehended at or near the border. Section 1226(a), on the other hand, permits the discretionary detention of noncitizens present in the country, but requires they receive an individualized determination of their risk of flight or danger to the community to justify detention.

39. Section 1226(a) should apply here. Any purported basis for Mr. Garcia's continued detention that ICE may belatedly argue does not apply. Assuming, *arguendo*, that Respondents purport to detain him under Section 1225(b)(2), such detention is improper because he is not subject to mandatory detention under that provision. Mr. Garcia does not fall within any mandatory detention category under the INA, and thus Mr. Garcia's detention without release or an individualized bond hearing pursuant to Section 1226 is unlawful.

A. Section 1226 governs Respondents' discretionary detention of Mr. Garcia

40. Congress created two distinct regimes for civil immigration detention. The INA, as codified by Title 8 of the U.S. Code, authorizes detention under two separate provisions, Section 1225 and Section 1226. *See Jennings v. Rodriguez*, 583 U.S. 281, 287–89 (2018). Section 1226(a) provides discretionary authority to the government to detain noncitizens who are already in the

country. 8 U.S.C. § 1226(a) ("[A]n alien *may be* arrested and detained pending a decision on whether the alien is to be removed . . . .") (emphasis added); *Jennings*, 583 U.S. at 289 (stating that Section 1226 "authorizes the Government to detain certain aliens *already in the country* pending the outcome of removal proceedings") (emphasis added). The facts, law, and decades of historical practice make clear that Mr. Garcia may only be detained pursuant to Section 1226(a).

41. By contrast, Section 1225 establishes the legal framework for the inspection and processing of individuals *seeking entry* into the United States, focusing on border enforcement and recent arrivals. While Section 1226(a) provides the "default rule" that permits discretionary detention of noncitizens who are "already in the country," Section 1225(b)(2)(A) imposes mandatory detention on noncitizens who are "seeking admission" to the United States. *See Jennings*, 583 U.S. at 287–89 (stating that Section 1225 governs "an alien seeking to enter the country" whereas Section 1226 governs aliens "once inside the United States").

42. Section 1225(b)(2) does not apply to Mr. Garcia because it requires mandatory detention of certain noncitizens who are "seeking admission" to this country which Mr. Garcia was not doing at the time of his arrest. 8 U.S.C. § 1225(b)(2)(A) ("[I]f 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 . . . .") (emphasis added); *Granados*, 2025 WL 3296314, at *4 (explaining that Section 1225 applies only to those seeking entry) (citing *Jennings*, 583 U.S. at 297). The only exception to detention under this section is temporary parole under INA Section 212(d)(5)(A) for humanitarian reasons or public benefit. 8 U.S.C. § 1182(d)(5)(A).

43. Despite this, it is likely that the DHS Respondents respond to this Petition purporting to detain Mr. Garcia pursuant to Section 1225(b)(2)(A). Indeed, although ICE has failed to provide the legal basis to detain Mr. Garcia in this particular case, ICE has been broadly

citing to a newly adopted legal theory first articulated in an internal ICE memorandum dated July 8, 2025, and subsequently endorsed by the BIA in *Yajure Hurtado*. *See, e.g.*, *Buenrostro-Mendez*, 2025 WL 2886346, at *3 n.3; *Granados Gonzalez v. Bondi*, No. 25-cv-04756, at 2–3 (S.D. Tex. Nov. 3, 2025); *Ventura Martinez v. Trump*, 2025 WL 2025 WL 3124847, at *1 (W.D. La. Oct. 22, 2025); *see also ICE Memo: Interim Guidance Regarding Detention Authority for Applications for Admission*, Am. Immigr. Laws. Ass'n (July 8, 2025), https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission (screen captures of July 8, 2025 ICE Memo announcing interim guidance).

44. This novel and legally unsupported policy from DHS would attempt to subject *all* persons with long-term presence in the interior to mandatory detention. ICE's new policy and the BIA's subsequent decision in *Yajure Hurtado* represent the government's erroneous attempt to apply § 1225(b)(2)(A) to all noncitizens, rather than a small subset of noncitizens "seeking admission" to the United States.

45. This theory has no basis in law. "As almost every district court, including . . . the Southern District of Texas, has concluded, 'the statutory text, the statute's history, Congressional intent, and § 1226(a)'s application for the past three decades' support application of Section 1226." *Padron Covarrubias v. Vergara*, 2025 WL 2950097, at *3 (S.D. Tex. Oct. 8, 2025) (quoting *Buenrostro-Mendez*, 2025 WL 2886346, at *3).[5]

[5] *See, e.g.*, *Barco Mercado v. Francis*, 2025 WL 3295903, App'x A (S.D.N.Y. Nov. 26, 2025) (collecting over 300 cases); *Cruz Gutierrez v. Thompson*, 2025 WL 3187521, at *3–7 (S.D. Tex. Nov. 14, 2025); *Gudashvili v. Noem*, No. 25-cv-00181, at 4–6 (S.D. Tex. Nov. 7, 2025); *Marikhasvili v. Noem*, No. 25-cv-00180, at 5–6 (S.D. Tex. Nov. 7, 2025); *Alkis v. Immigr. & Customs Enf't*, No. 25-cv-168, at 3–6 (S.D. Tex. Nov. 4, 2025); *Trujillo Rivas v. Bondi*, No. 25-cv-4974, at 3 (S.D. Tex. Nov. 3, 2025); *Granados Gonzalez v. Bondi*, No. 25-cv-04756, at 2–4 (S.D. Tex. Nov. 3, 2025); *Granados v. Noem*, 2025 WL 3296314 (W.D. Tex. Nov. 26, 2025); *Penuela Carlos v. Bondi*, 2025 WL 3252561 (E.D. Tex. Nov. 21, 2025); *Orellana Cantarero v. Bondi*, 2025 WL 3252402 (E.D. Tex. Nov. 20, 2025); *Cardona-Lozano v. Noem*, 2025 WL 3218244 (W.D. Tex. Nov. 14, 2025); *Hernandez Hervert v. Bondi*, No. 25-cv-1763 (W.D. Tex. Nov. 14, 2025); *Ortega Munoz v. Noem*, 2025 WL 3218241 (W.D. Tex. Nov. 7, 2025); *Rojas Vargas v. Bondi*, 2025 WL 3251728 (W.D. Tex. Nov. 5, 2025) (granting temporary restraining order); *De Leon Hernandez v. Bondi*, 2025 WL 3217037 (W.D. La. Nov. 18, 2025); *Pineda Parada v. Rice*, 2025 WL 3146250 (W.D.

46. Indeed, in the two months since the BIA decided *Yajure Hurtado*, a steadily increasing number of district courts across the country have explicitly rejected its holding. *See, e.g.*, *Ventura Martinez,* 2025 WL 3124847, at *2 ("What the BIA thinks of the matter, as expressed in [*Yajure Hurtado*] is of no moment, as it is principally our job to interpret statutes. And the Court respectfully disagrees with how the BIA reads §§ 1226(a) and 1225(b)(2)(A) in conjunction with one another.") (cleaned up) (citing *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 385 (2024)); *Pizarro Reyes v. Raycraft*, 2025 WL 2609425, at *6 (E.D. Mich. Sept. 9, 2025)); *Buenrostro-Mendez*, 2025 WL 2886346, at *3 n.3; *Granados Gonzalez*, No. 25-cv-04756, at 3 n.2; *Trujillo Rivas v. Bondi*, No. 25-cv-4974, at 3 n.1 (S.D. Tex. Nov. 3, 2025).[6]

La. Nov. 4, 2025); *Ventura Martinez v. Trump*, 2025 WL 3124847 (W.D. La. Oct. 22, 2025) (granting preliminary injunction); *Lopez Santos v. Noem*, 2025 WL 2642278, at *3–5 (W.D. La. Sept. 11, 2025); *Kostak v. Trump*, 2025 WL 2472136, at *3–6 (W.D. La. Aug. 27, 2025) (granting preliminary injunction); *Sarmiento Guerrero v. Noem*, 2025 WL 3214787 (E.D.N.Y. Nov. 18, 2025) (granting preliminary injunction); *Silva Orellana v. Noem*, 2025 WL 3198685 (W.D. Mich. Nov. 17, 2025); *Lira Perez v. Noem*, 2025 WL 3140692 (N.D. Ill. Nov. 10, 2025); *Vasquez Carcamo v. Noem*, 2025 WL 3119263 (M.D. Fla. Nov. 7, 2025); *Teyim v. Perry*, 2025 WL 2950183 (E.D. Va. Oct. 15, 2025); *Alejandro v. Olson*, 2025 WL 2896348 (S.D. Ind. Oct. 11, 2025); *B.D.V.S. v. Forestal*, 2025 WL 2855743, at *2 (S.D. Ind. Oct. 8, 2025); *Eliseo A.A. v. Olson*, 2025 WL 2886729, at *2–4 (D. Minn. Oct. 8, 2025); *Ledesma Gonzalez v. Bostock*, 2025 WL 2841574, at *2–4 (W.D. Wash. Oct. 7, 2025); *Hyppolite v. Noem*, 2025 WL 2829511, at *9 (E.D.N.Y. Oct. 6, 2025); *Cordero Pelico v. Kaiser*, 2025 WL 2822876, at *7–15 (N.D. Cal. Oct. 3, 2025) (granting preliminary injunction); *Echevarria v. Bondi*, 2025 WL 2821282, at *4–10 (D. Ariz. Oct. 3, 2025) (granting preliminary injunction); *Elias Escobar v. Hyde*, 2025 WL 2823324, at *2–3 (D. Mass. Oct. 3, 2025); *Ayala Casun v. Hyde*, 2025 WL 2806769, at *2 (D.R.I. Oct. 2, 2025); *Belsai D.S. v. Bondi*, 2025 WL 2802947, at *5–7 (D. Minn. Oct. 1, 2025); *Santiago Helbrum v. Williams*, 2025 WL 2840273, at *4–7 (S.D. Iowa Sept. 30, 2025); *Alves da Silva v. ICE*, 2025 WL 2778083, at *3 (D.N.H. Sept. 29, 2025); *Luna Quispe v. Crawford*, 2025 WL 2783799, at *4–6 (E.D. Va. Sept. 29, 2025); *Rivera Zumba v. Bondi*, 2025 WL 2753496, at *4–9 (D. N.J. Sept. 26, 2025); *Hernandez Lopez v. Hardin*, 2025 WL 2732717, at *2 (M.D. Fla. Sept. 25, 2025) (granting temporary restraining order); *Giron Reyes v. Lyons*, 2025 WL 2712427, at *4–5 (N.D. Iowa Sept. 23, 2025) (granting preliminary injunction); *Guerrero Lepe v. Andrews*, 2025 WL 2716910, at *3–9 (E.D. Cal. Sept. 23, 2025) (granting temporary restraining order); *Sanchez Roman v. Noem*, 2025 WL 2710211, at *5–7 (D. Nev. Sept. 23, 2025); *Chogllo Chafla v. Scott*, 2025 WL 2688541, at *7 (D. Me. Sept. 22, 2025) (granting preliminary injunction); *Campos Leon v. Forestal*, 2025 WL 2694763, at *2–3 (S.D. Ind. Sept. 22, 2025); *Singh v. Lewis*, 2025 WL 2699219, at *3 (W.D. Ky. Sept. 22, 2025); *Hasan v. Crawford*, 2025 WL 2682255, at *5–9 (E.D. Va. Sept. 19, 2025); *Maldonado Vazquez v. Feeley*, 2025 WL 2676082, at *11–23 (D. Nev. Sept. 17, 2025) (granting preliminary injunction); *Salazar v. Dedos*, 2025 WL 2676729, at *4 (D.N.M. Sept. 17, 2025); *Garcia Cortes v. Noem*, 2025 WL 2652880, at *2–3 (D. Colo. Sept. 16, 2025); *Pizarro Reyes v. Raycraft*, 2025 WL 2609425, at *4–8 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, 2025 WL 2607924, at *7–8 (D. Mass. Sept. 9, 2025); *Zaragoza Mosqueda et al. v. Noem*, 2025 WL 2591530, at *4–5 (C.D. Cal. Sept. 8, 2025) (granting preliminary injunction); *Lopez Benitez v. Francis*, 2025 WL 2371588, at *3–9 (S.D.N.Y. Aug. 13, 2025).

[6] *See also, e.g.*, *Cruz Gutierrez*, No. 25-cv-4695, at 10 n.6; *Hyppolite*, 2025 WL 2829511, at *11; *Maldonado Vazquez*, 2025 WL 2676082, at *11–23 (granting preliminary injunction); *Sampiao*, at *11; *Elias Escobar*, 2025 WL 2823324, at *2–3; *Chogllo Chafla*, 2025 WL 2688541, at *7; *Jimenez v. FCI Berlin, Warden*, 2025 WL 2639390, at

47. What's more, on November 20, 2025, the U.S. District Court for the Central District of California held that the BIA's decision in *Yajure Hurtado* does not foreclose the custody redetermination of certain noncitizen petitioners who entered the United States without inspection and are subject to Section 1226(a). *Maldonado Bautista v. Santacruz*, 2025 WL 3289861 (C.D. Cal. Nov. 20, 2025) ("*Maldonado Bautista I*"). The Court extended this decision on November 25, 2025, to a class defined as:

> 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.

Maldonado Bautista v. Santacruz, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025) ("*Maldonado Bautista II*").

48. Mr. Garcia is more than similarly situated to the *Maldonado Bautista* class. He entered the United States without inspection and is not subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231. Mr. Garcia's only distinction from the *Maldonado Bautista* class is that he was apprehended by immigration authorities shortly after arrival, though not immediately upon entry. This brief apprehension occurred nine years ago, as DHS processed Mr. Garcia then subsequently released him on his own recognizance pursuant to Section 1226. *See* Ex. 5, Order of Release on Recognizance.

49. As such, if Mr. Garcia is being held pursuant to a statute—which he must be for his detention to be even remotely lawful—he plainly falls within the ambit of Section 1226(a), not

*10 n.9 (D.N.H. Sept. 8, 2025); *Artiga v. Genalo*, 2025 WL 2829434, at *7 (E.D.N.Y. Oct. 5, 2025); *Beltran Barrera v. Tindall*, 2025 WL 2690565, at *5 (W.D. Ky. Sept. 19, 2025); *Singh*, 2025 WL 2699219, at *3; *Pizarro Reyes*, 2025 WL 2609425, at *6–7; *Guerrero Lepe*, 2025 WL 2716910, at *4 & n.5 (granting preliminary injunction); *Salcedo Aceros v. Kaiser*, 2025 WL 2637503, at *9–12 (N.D. Cal. Sept. 12, 2025) (granting preliminary injunction); *Alvarez Puga v. Assistant Field Off. Dir.*, 2025 WL 2938369, at *5 (S.D. Fla. Oct. 15, 2025); *Aguilar Merino v. Ripa*, 2025 WL 2941609, at *5 (S.D. Fla. Oct. 15, 2025); *Hernandez Hernandez v. Crawford*, 2025 WL 2940702, at *2 n.4 (E.D. Va. Oct. 16, 2025).

Section 1225(b). *See Zadvydas v. Davis*, 533 U.S. 678, 699–700 (2001) (finding indefinite detention of immigration detainee impermissible without statutory authorization). "Plainly, 'arriving' means 'arriving.'" *Ventura Martinez,* 2025 WL 3124847, at *2 (citing *Pizarro Reyes*, 2025 WL 2609425, at *5). "'[A]lready present' means 'already present,' and there is no synonymity, nor ambiguity, between." *Id.* (citing *Jennings*, 583 U.S. at 303). Mr. Garcia has now lived freely in the United States for nine years. He cannot be considered an "arriving alien." He was not encountered at a port of entry, nor was he apprehended "arriving in" the United States or "shortly after" crossing the border. Rather, he is a long-term resident apprehended nine years after his initial and exclusive entry. *See, e.g., Padron Covarrubias,* 2025 WL 2950097, at *4 ("'[S]eeking admission' is a present-tense, or current, ongoing action, and varies materially from the passive state of being an applicant."). Tellingly, even when DHS apprehended and released Mr. Garcia when he first entered the country in 2016, they did so pursuant to Section 1226. *See* Ex. 2, Warrant for Arrest of Alien (Mr. Garcia is "liable to being taken into custody as authorized by section 1226 of the [INA]"); Ex. 3, Notice of Custody Determination (custody determined "[p]ursuant to the authority contained in [Section 1226]"); Ex. 6, Order of Release on Recognizance ("In accordance with [Section 1226] . . . you are being released on your own recognizance").

50. In addition, documentation from his 2025 apprehension, though not naming Section 1226 explicitly, strongly suggests that the government considered him eligible for a bond hearing pursuant to Section 1226. Ex. 11, Record of Deportable/Inadmissible Alien (Oct. 27, 2025) ("GARCIA-GARCIA will remain in ICE custody *pending an Immigration court hearing*.") (emphasis added).[7] These admissions alone are dispositive. *See, e.g.*, *Sampiao v. Hyde*, 2025 WL

[7] Mr. Garcia was not provided access to counsel during his arrest or initial detainment, and counsel has not been able to verify the accuracy of Mr. Garcia's alleged statements reflected on the Form I-213.

2607924, at *1 (D. Mass. Sept. 9, 2025) ("Because [petitioner] was arrested on a warrant under Section 1226, his detention continues to be governed by Section 1226(a)'s discretionary framework.").

51. This conflict between DHS's policy and the statutory framework is particularly evident in Mr. Garcia's case. When Mr. Garcia was transferred to ICE custody on October 27, 2025, he was an "alien already present in the United States," and accordingly he "is subject to Section 1226, not Section 1225, and is thus not subject to mandatory detention." *Ventura Martinez*, 2025 WL 3124847, at *2 (citing *Kostak*, 2025 WL 2472136, at *2–3); *see also Lopez Santos*, 2025 WL 2642278, at *3–5 (finding petitioner present in the country for over twenty years not to be an "arriving alien", thus subject to 1226(a) not 1225); *J.U. v. Maldonado*, 2025 WL 2772765, at *8 (E.D.N.Y. Sept. 29, 2025) (finding that petitioner "effected entry into the United States in the past year since his release" near the border, in holding that petitioner may only be subject to discretionary detention under Section 1226(a)).

52. Because Mr. Garcia has been present in the United States for nearly a decade since his entry and his apprehension and release by DHS, he cannot be determined to be "seeking admission" to the country. *See Padron Covarrubias,* 2025 WL 2950097, at *4 (holding that petitioner apprehended after decades of working and residing in the United States was not "seeking admission" under § 1225(b)(2)(A), despite being considered an "applicant for admission" under § 1225(a)(1), but was already present in the country and subject to § 1226(a)) (citing *Rodriguez v. Bostock*, 2025 WL 2782499, at *17–19 (W.D. Wash Sept. 30, 2025)); *Cordero Pelico v. Kaiser*, 2025 WL 2822876, at *8 (N.D. Cal. Oct. 3, 2025); *Cruz Gutierrez v. Thompson*, 2025 WL 3187521, at *3–4; *Hernandez Hervert v. Bondi*, No. 25-cv-1763, at 6–7 (W.D. Tex. Nov. 14, 2025).

B. Section 1225 (b)(2)(A) does not apply to Mr. Garcia

53. Mr. Garcia must also be categorized under Section 1226(a) because, under well-settled canons, including the rule of lenity in immigration law, any ambiguity must be resolved in favor of the noncitizen. *See Fong Haw Tan v. Phelan*, 333 U.S. 6, 10 (1948); *Leocal v. Ashcroft*, 543 U.S. 1, 11 n.8 (2004); *Carachuri-Rosendo v. Holder*, 560 U.S. 563, 581 (2010); *Moncrieffe v. Holder*, 569 U.S. 184, 191 (2013); *Zadvydas*, 533 U.S. at 689–90; *Martinez v. Mukasey*, 519 F.3d 532, 544 (5th Cir. 2008); *Lugo-Resendez v. Lynch*, 831 F.3d 337, 343 (5th Cir. 2016). Although several of these cases arose in the criminal-removal context, courts have consistently extended the lenity canon to civil immigration statutes as well, because deportation and detention implicate fundamental liberty interests. Accordingly, this Court must apply the statute's text, structure, and constitutional principles rather than defer to inconsistent and shifting agency views.

54. Moreover, considering Section 1225 alongside its Section 1226 companion demonstrates that the most natural interpretation of Section 1225 is that it applies to aliens encountered as they are attempting to enter the United States or shortly after they gained entry without inspection. *See Pizarro Reyes v. Raycraft,* 2025 WL 2609425, at *4–5 (E.D. Mich. Sept. 9, 2025). Section 1225 repeatedly refers to aliens entering the country. *See* Section 1225(b)(1)(A)(i) (screenings for aliens "arriving in the United States"); *id.* Section 1225(b)(2)(C) (aliens "arriving on land . . . from a foreign territory contiguous to the United States" may be returned to that territory pending removal proceedings); *id.* Section 1225(d)(1) (immigration officers authorized to inspect "any vessel, aircraft, railway car, or other conveyance or vehicle in which they believe aliens are being brought into the United States").

55. Furthermore, "[t]he title of §1225 is revealing: 'Inspection by immigration officers; expedited removal of inadmissible *arriving* aliens; referral for hearing.'" *Pizarro Reyes,* 2025 WL 2609425, at *5 (emphasis added). "The use of 'arriving' to describe noncitizens strongly indicates

that the statute governs the *entrance* of noncitizens to the United States." *Id.* (emphasis in original). The statute further explicitly addresses "crewm[e]n" and "stowaway[s]" in Section 1225(b)(2)(B), reflecting that Congress envisions Section 1225(b)(2) applying only to noncitizens arriving at the border. Similarly, Section 1225(a) of the statute focuses on the pre-inspection of aliens entering the country at foreign airports. Considering Section 1225 in conjunction with Section 1226's broader language demonstrates that Section 1225 is constructed with border encounters in mind.

56. Finally, courts construe statutes "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). Adopting the DHS's recent reading of Section 1225 would be to find recent congressional enactments superfluous. For example, Congress passed the Laken Riley Act to amend Section 1226(c) and include more classes of aliens who are ineligible for bond under Section 1226(a). Laken Riley Act, Pub. L. No. 119-1, sec. 236, § 2, 139 Stat. 3, 3 (2025). One of those new classes of non-bondable aliens are aliens not admitted into the United States who were charged with specific crimes. Section 1226(c)(1)(E) (citing 8 U.S.C. § 1182(a)(6)(A)). Under DHS's apparent expansive interpretation of Section 1225, the amendment would have no purpose. Section 1225(b)(2) would already provide for mandatory detention of every unadmitted alien, regardless of whether the alien falls within one of the new classes of non-bondable aliens established by the Laken Riley Act.

57. For these reasons, Mr. Garcia cannot be detained lawfully pursuant to Section 1225 (b)(2)(A).

C. Respondents cannot invoke any alternative subsections of Section 1225(b) to detain Mr. Garcia

58. No other subsections of Section 1225(b) apply. Under Section 1225(b)(1), a noncitizen arriving in the U.S. or a noncitizen "who has not been admitted or paroled into the U.S., and who has not affirmatively shown . . . that the alien has been physically present in the U.S. continuously for the 2-year period immediately prior to the date of the determination of inadmissibility" may be subject to expedited removal proceedings. 8 U.S.C. 1225(b)(1)(A)(iii)(II). Section 1225's expedited removal provisions further mandate that "any alien . . . shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed." 8 U.S.C. 1225(b)(1)(B)(iii)(IV).

59. Section 1225(b)(1) does not apply to Mr. Garcia because he was placed in Section 1229a removal proceedings after entry nine years ago and has remained in the United States for more than two years while awaiting a final determination of his asylum claim. After entry, border patrol agents interviewed Mr. Garcia, who expressed a fear of return to Guatemala, *see* Ex. 4, Record of Deportable/Inadmissible Alien; DHS then issued him a Notice to Appear ("NTA"), initiating proceedings under Section 1229a. *See* Ex. 5, Notice to Appear. The government's decision to commence Section 240 removal proceedings, rather than expedited removal under Section 1225(b)(1), supports the fact that his case is one of enforcement and is instead governed by Section 1226(a). Applying Section 1225(b)(1) now would nullify Congress's intent to provide a path for asylum applicants.

60. Moreover, Respondents cannot invoke Section 1225(b)(1), because its plain language limits application to individuals physically present in the United States for less than two years. *See* 8 U.S.C. § 1225(b)(1)(A)(iii)(II). Mr. Garcia has lived in the United States for over nine years and therefore falls squarely outside the statutory reach of Section 1225(b)(1).

Accordingly, any detention authority must arise, if at all, only under Section 1226(a), which requires an individualized bond hearing.

II. Mr. Garcia Should Be Released From ICE Detention Because His Detention Violates His Procedural Due Process Rights

61. Beyond the statutory authority (or lack thereof) for his detention, Mr. Garcia is detained in violation of his procedural due process rights under the Fifth Amendment.

62. The Fifth Amendment to the United States Constitution provides that "[n]o person shall be . . . deprived of life, liberty, or property without due process of law." U.S. Const. amend. V.

63. The Fifth Amendment's Due Process Clause applies to "all persons" within the United States, including noncitizens. *See Zadvydas*, 533 U.S. at 693; *Vasquez Chinchilla v. De Anda-Ybarra*, 2025 WL 3268459, at *3 (W.D. Tex. Nov. 24, 2025) (finding noncitizen who had resided in the United States for several years was entitled to Fifth Amendment due process protections). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." *Zadvydas*, 533 U.S. at 690. In the immigration context, detention is constitutionally justified only to prevent flight or protect the community. *Demore v. Kim*, 538 U.S. 510, 528 (2003).

64. In determining whether an individual's procedural due process rights have been violated, courts weigh three factors: (1) "the private interest that will be affected by the official action;" (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards;" and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

65. Here, the *Mathews* test strongly supports Mr. Garcia's claim of a procedural due process violation. *See, e.g.*, *Lopez-Arevelo v. Ripa*, 2025 WL 2691828, at *10–12 (W.D. Tex. Sept. 22, 2025) (finding that all three *Mathews* factors favored petitioner because nearly three years at liberty created a strong private interest, denial of a bond hearing posed a high risk of erroneous deprivation, and the government's cost concerns were minimal given prior practice of providing bond hearings); *Vasquez Chinchilla*, 2025 WL 3268459, at *4–5 (same); *Hernandez-Fernandez v. Lyons*, 2025 WL 2976923, at *8–10 (W.D. Tex. Oct. 21, 2025) (same); *Vieira v. De Anda-Ybarra*, 2025 WL 2937880, at *6–7 (W.D. Tex. Oct. 16, 2025) (finding Section 1225(b)(2) unconstitutional as applied to petitioner because all three *Mathews* factors favored petitioner: prolonged liberty interest after release on bond, minimal government burden given decades of prior bond hearings, and high risk of erroneous deprivation absent a hearing); *Gonzalez Martinez v. Noem*, 2025 WL 2965859, at *3–5 (W.D. Tex. Oct. 21, 2025) (finding that detention without a bond hearing violated procedural due process under *Mathews* where petitioner lived in the U.S. for decades and an individualized bond hearing would both mitigate the risk of erroneous deprivation and address the government's interest in ensuring appearance at removal hearings and community safety).

66. Under the first *Mathews* factor, Mr. Garcia's private interest "in being free from physical detention" is of fundamental importance. *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004); *see also United States v. Salerno*, 481 U.S. 739, 755 (1987) ("In our society liberty is the norm, and detention . . . is the carefully limited exception."); *Zadvydas*, 533 U.S. at 690 (explaining that an individual's interest in being free from detention "lies at the heart of the liberty that [the Due Process] Clause protects"); *Vasquez Chinchilla*, 2025 WL 3268459, at *4 ("[T]his Court finds Petitioner possesses a strong liberty interest in his freedom from detention because he has established a life here – albeit without authorization. Accordingly, he possesses a cognizable

interest in his freedom from detention that deserves great weight and gravity.") (internal citations omitted). Indeed, freedom from physical detention is "the most elemental of liberty interests." *Hamdi*, 542 U.S. at 529.

67. Moreover, under Section 1226(a), DHS may detain a noncitizen only after an individualized finding that detention is necessary to ensure appearance or protect the community—findings that can be made only through a bond hearing before a neutral decisionmaker. *See* Section 1226(a). DHS's failure to provide that hearing deprives Mr. Garcia of the very procedural safeguard that Congress and the Constitution require.

68. Mr. Garcia "was detained without any pre-detention, individualized determination as to whether he posed a flight risk or any risk of dangerousness." *Hyppolite v. Noem*, 2025 WL 2829511, at *13 (E.D.N.Y. Oct. 6, 2025); *Lopez-Arevelo*, 2025 WL 2691828, at *11. Mr. Garcia has now resided in the United States for more than two years, a period that statutorily forecloses detention under Section 1225(b) and guarantees his right to an individualized bond hearing under Section 1226(a). Yet ICE detained him without affording such a hearing, in clear violation of both the INA and due process.

69. For these reasons, the first *Mathews* factor strongly supports Mr. Garcia's claim of a procedural due process violation.

70. Under the second *Mathews* factor, the risk of erroneous deprivation of Mr. Garcia's private interest is obvious because Mr. Garcia is not subject to mandatory detention under Section 1225(b)(2) but Respondents are effectively treating him as such. This "creates a substantial risk of erroneous deprivation of [Mr. Garcia's] interest in being free from arbitrary confinement" because it "fails to account for any individualized facts." *Hasan v. Crawford*, 2025 WL 2682255, at *12 (E.D. Va. Sept. 19, 2025) (citing *Maldonado v. Olson*, 2025 WL 2374411, at

*13 (D. Minn. Aug. 15, 2025)). "The risk lies in the automatic continued deprivation of liberty for a noncitizen who has lived in the United States for over [nine] years and with strong ties to the community, especially where there are no facts in the record to reflect [Mr. Garcia's] dangerousness or flight risk." *See Vasquez Chinchilla*, 2025 WL 3268459, at *5. Moreover, because requesting any administrative redress is "almost certainly a futile exercise," after the BIA's decision in *Yajure Hurtado*, and Judge Caborn's decision in this case "there is a high risk that [Mr. Garcia] has been and will continue to be erroneously deprived of his liberty." *See Lopez-Arevelo*, 2025 WL 2691828, at *11.

71. Mr. Garcia's personal circumstances further demonstrate the "extremely high" risk of erroneous deprivation of his liberty here: Mr. Garcia has no history of violence, has resided in the United States for more than two years, has timely filed for asylum and is awaiting the outcome of that process, has extensive community ties, lives with and has a close relationship with his family, and serves as an active member of his community. *See Hyppolite*, 2025 WL 2829511, at *13 (finding "extremely high" risk of erroneous deprivation of petitioner's liberty interest when petitioner had applied for asylum and was held in indefinite detention without a bond hearing). Without an individualized custody determination, there is a high risk that Mr. Garcia is being erroneously deprived of his liberty.

72. For these reasons, the second *Mathews* factor also strongly supports Mr. Garcia's claim of a procedural due process violation.

73. As to the third *Mathews* factor, the extreme risk of erroneous deprivation of Mr. Garcia's liberty interest heavily outweighs any interest of DHS in subjecting Mr. Garcia to continued detention, or the burden of any substitute procedures. "The government's interest in detaining people on a discretionary, case-by-case basis under § 1226(a) includes 'ensuring the

appearance of aliens at future immigration proceedings' and 'preventing danger to the community.'" *Hyppolite*, 2025 WL 2829511, at *14 (quoting *Valdez v. Joyce*, 2025 WL 1707737, at *4 (S.D.N.Y. June 18, 2025)); *see also Lopez-Arevelo*, 2025 WL 2691828, at *11 ("[T]he decision to release [petitioner] on his own recognizance . . . 'reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk,'" lessening the government's interest in detention). Mr. Garcia is a non-violent individual who consistently complies with immigration proceedings and requirements with assistance of his *pro bono* counsel. There is no evidence that he is a flight risk or danger to the community.

74. "The government's interest is generally protected by affording bond hearings like the one Petitioner is requesting. Further, any fiscal or administrative burdens Respondents may assert by having to provide a bond hearing are diminished given the government had conducted such hearings until a change in the agency's interpretation of the law." *Vasquez Chinchilla*, 2025 WL 3268459, at *5; *see also Lopez-Arevelo*, 2025 WL 2691828, at *11–12 (finding cost to government unpersuasive after decades of practice); *Vieira*, 2025 WL 2937880, at *6 (same). Finally, those government interests are likewise served by separate mandatory detention procedures applicable to certain categories of noncitizens under which Mr. Garcia categorically does not fall. *See* 8 U.S.C. § 1226(c); *Hasan*, 2025 WL 2682255, at *12 (finding same).

75. Thus, the *Mathews* factors establish that Mr. Garcia's detention—without any individualized hearing or procedural safeguards—violates his procedural due process rights under the Fifth Amendment.

III. Mr. Garcia's Detention Also Violates His Substantive Due Process Rights

76. In addition to its procedural protections, the Due Process Clause of the Fifth Amendment "includes a substantive component that mandates the application of strict scrutiny whenever the government infringes on fundamental liberty interests, regardless of what process

the government provides." *Hasan*, 2025 WL 2682255, at *10 (citing *Reno v. Flores*, 507 U.S. 292, 302 (1993)). "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.

77. "[G]overnment detention violates that Clause unless the detention is ordered in a criminal proceeding with adequate procedural protections or, in certain special and narrow nonpunitive circumstances where a special justification . . . outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690 (citation modified). "This guarantee extends to noncitizens present in the United States." *Hasan*, 2025 WL 2682255, at *10 (citing *Zadvydas*, 533 U.S. at 693).

78. Respondents have provided no special justification to deny Mr. Garcia his liberty. Nor could they.

79. As discussed above, ICE has failed to identify any statutory authority, despite repeated requests, justifying Mr. Garcia's continued detention, underscoring the entirely arbitrary and unlawful nature of this confinement. Moreover, ICE has presented no indication that Mr. Garcia poses a flight risk or danger to the community.

80. Accordingly, ICE's decision to detain Mr. Garcia—without individualized findings, statutory authority, or any special justification—is arbitrary and violates the substantive component of the Fifth Amendment's Due Process Clause.

IV. Administrative Exhaustion Has Been Satisfied or Should Be Excused

81. Mr. Garcia has satisfied all possible avenues to administrative redress at this time. He has formally and informally requested release from ICE, who has repeatedly denied these requests with little to no explanations. Moreover, on December 2, 2025, Mr. Garcia filed a motion requesting a bond hearing in the Conroe Immigration Court. Ex. 15, Motion for Bond. He attended a hearing at the Immigration Court on December 9, 2025; however, Immigration Judge Caborn denied Mr. Garcia's request for custody determination due to a lack of jurisdiction, consistent with the BIA's decision in *Yajure Hurtado*. Ex. 16, Order of the Immigration Judge.

82. In any event, administrative exhaustion is not a statutory requirement and would not bar this Court's review of Mr. Garcia's Petition. *Buenrostro-Mendez*, 2025 WL 2886346, at *3. Any attempt by Mr. Garcia to receive administrative relief is futile, given that since *Yajure Hurtado*, immigration judges across the country—including Immigration Judge Caborn—have refused to permit detainees like Mr. Garcia to obtain custody redetermination. Upon review of those decisions, federal courts are now consistently holding that administrative exhaustion is not required when the effort would be futile because of the immigration courts' adherence to *Yajure Hurtado*. *See supra*, n.6. Such is the case for Mr. Garcia.

83. Accordingly, the Court should find that Mr. Garcia has satisfied the administrative exhaustion requirement, or alternatively, waive the administrative exhaustion requirement since ICE has made clear the agencies will not grant any further relief.

A. Administrative exhaustion has been satisfied

84. To the extent that this Court would prudentially require exhaustion of administrative remedies before providing judicial relief, Mr. Garcia has satisfied that requirement. Specifically, he formally requested in a letter to ICE that he be released on parole or conditional

bail as he is not a danger to the community or a flight risk, and his counsel repeatedly requested he be released or that ICE provide the statutory basis for his detention. Ex. 13, Letter to Officer Jimenez; Ex. 12, Emails with Officer Jimenez. ICE has continuously denied relief and failed to provide any legal basis for his detention. It is clear that Mr. Garcia will not receive any recourse by appealing to the DHS Respondents.

85. Moreover, Mr. Garcia filed a motion requesting a bond hearing before the Conroe Immigration Court on December 2, 2025. Ex. 15, Motion for Bond. However, on December 9, 2025, Judge Caborn followed the BIA's decision in *Yajure Hurtado* and declined to provide Mr. Garcia with an individualized custody redetermination, citing a lack of jurisdiction. Ex. 16, Order of the Immigration Judge. As explained *infra* section IV.B, it is unlikely that the BIA will reject its own reasoning in *Yajure Hurtado* and provide any genuine review or relief to Mr. Garcia on appeal. *See, e.g.*, *Lopez-Arevelo*, 2025 WL 2691828, at *11 ("But given the BIA's interpretation of mandatory detention in *Yajure Hurtado*, [appealing a denial of custody redetermination] is almost certainly a futile exercise."); *Kostak*, 2025 WL 2472136, at *3 (excusing administrative exhaustion and granting habeas petition when petition was filed after custody redetermination was denied). Accordingly, Mr. Garcia has no further avenue to administrative remedy for his wrongful detention and has exhausted that requirement. There is no viable possibility of the agency remedying the past and ongoing violations of Mr. Garcia's rights under the INA and the Constitution. Absent this Court's intervention, Mr. Garcia will remain unlawfully detained.

86. Since Mr. Garcia cannot receive a bond hearing, notwithstanding the fact that he poses no threat to society and is not a flight risk, this Court should find that Mr. Garcia has satisfied administrative exhaustion.

B. Administrative exhaustion is futile

87. Even if the Court determines that administrative exhaustion has not yet been satisfied, it should be excused. Courts generally excuse administrative exhaustion and grant habeas petitions for relief from custody when administrative appeal would be futile. *See, e.g.*, *Maldonado Vazquez v. Feeley*, 2025 WL 2676082, at *10 (D. Nev. Sept. 17, 2025) (finding attempts at administrative exhaustion futile after *Yajure Hurtado*). Since *Yajure Hurtado* was decided by the BIA, district courts have consistently found that pursuing administrative exhaustion would be futile for detainees who ICE asserts are mandatorily detained—even *before* a bond hearing has been requested or the BIA has decided any appeals—given that lack of administrative relief has been rendered a "foregone conclusion" by *Yajure Hurtado*. *Maldonado Vazquez*, 2025 WL 2676082, at *10; *see also, e.g.*, *Buenrostro-Mendez*, 2025 WL 2886346, at *3 (recognizing federal courts need not find *Yajure Hurtado* persuasive); *Lopez-Arevelo*, 2025 WL 2691828, at *6 ("But given the BIA's interpretation of mandatory detention in *Yajure Hurtado*, [appealing a denial of custody redetermination] is almost certainly a futile exercise."); *Kostak*, 2025 WL 2472136, at *3 (excusing administrative exhaustion and granting habeas petition when petition was filed after custody redetermination was denied); *Lira Perez v. Noem*, 2025 WL 3140692, at *5 (N.D. Ill. Nov. 10, 2025) (excusing administrative exhaustion and granting habeas petition when petition was filed before a bond hearing was requested); *Silva Orellana v. Noem*, 2025 WL 3198685, at *4 (W.D. Mich. Nov. 17, 2025) (same); *Rodriguez Loredo v. Forestal*, 2025 WL 3187319, at *4 (N.D. Ill. Nov. 14, 2025) (same); *Vasquez Carcamo v. Noem*, 2025 WL 3119263, at *3 (M.D. Fla. Nov. 7, 2025) (same); *Granados Gonzalez*, No. 25-cv-04756, at 4 n.4 (same); *Patel v. Crowley*, 2025 WL 2996787, at *9 (N.D. Ill. Oct. 24, 2025) (same). Moreover, if it is determined that Mr. Garcia does

not fall within the class defined in *Maldonado Bautista II*, the BIA is likely to follow *Yajure Hurtado* in his case.

88. Accordingly, courts have excused the exhaustion requirement for petitioners like Mr. Garcia who are in ICE custody without individualized determinations of their eligibility for detention or release. *See, e.g.*, *Buenrostro-Mendez*, 2025 WL 2886346, at *3; *Lopez-Arevelo*, 2025 WL 2691828, at *6; *Kostak*, 2025 WL 2472136, at *3; *Patel*, 2025 WL 2996787, at *9 (concluding that "attempting exhaustion would be futile because an immigration judge lacks the ability to consider [petitioner's] bond request absent Section 2241 relief due to its obligation to follow *Yajure Hurtado*"); *Lira Perez v. Noem*, 2025 WL 3140692, at *5 (N.D. Ill. Nov. 10, 2025) (waiving requirement for petitioner to request a bond hearing); *Vasquez Carcamo*, 2025 WL 3119263 (same).

89. Moreover, Mr. Garcia has no genuine opportunity for relief through administrative avenues because he brings a constitutional claim against the government, and immigration courts do not have authority to address *habeas* petitioners' constitutional challenges. *See Lopez Benitez*, 2025 WL 2371588, at *14 (stating that a constitutional challenge to immigration detention "cannot properly be adjudicated administratively") (citing *Valdez*, 2025 WL 1707737, at *1, n.1); *Maldonado Vazquez*, 2025 WL 2676082, at *10 (excusing administrative exhaustion where "[p]etitioner's constitutional challenge to his detention is necessarily beyond the scope of the BIA's review"); *Hyppolite*, 2025 WL 2829511, at *11 (quoting *Loper Bright*, 603 U.S. at 402) ("Congress has not taken the power to authoritatively interpret a statute from the courts and given it to an agency.") (citation modified).

90. For these reasons, any further attempt at administrative recourse would be futile.

CLAIMS FOR RELIEF

COUNT ONE

VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT

8. U.S.C. §§ 1225(b)(2) and 1226(a)

91. Mr. Garcia realleges and incorporates by reference each and every allegation contained above.

92. The mandatory detention provision at Section 1225(b)(2) does not apply to noncitizens who have resided in the United States for more than two years or who are otherwise in removal proceedings under Section 1229a.

93. Mr. Garcia has been continuously present in the United States for more than two years and was lawfully placed in removal proceedings under Section 1229a. Under the plain terms of the INA, as codified, Mr. Garcia's detention is governed by Section 1226(a), not Section 1225(b)(2).

94. Section 1226(a) provides that a noncitizen "may be arrested and detained pending a decision on whether the alien is to be removed" and expressly authorizes discretionary release on bond or conditional parole following an individualized custody determination.

95. DHS's refusal to provide Mr. Garcia with an individualized bond hearing, and its continued de facto treatment of his detention as mandatory under Section 1225(b)(2), violates Section 1226(a).

96. The application of Section 1225(b)(2) to Mr. Garcia unlawfully mandates his continued detention and is ultra vires. Accordingly, Mr. Garcia respectfully requests this court grant his immediate release, or in the alternative, require he be given an individualized bond hearing pursuant to Section 1226(a).

COUNT TWO

VIOLATION OF PROCEDURAL DUE PROCESS

U.S. Const. amend. V

97. Mr. Garcia realleges and incorporates by reference each and every allegation contained above.

98. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the [Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690.

99. In assessing whether a person has been deprived of the right to procedural due process, courts weigh the factors from *Mathews v. Eldridge*: (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.

100. Here, all three *Mathews* factors favor Mr. Garcia because (1) nearly a decade at liberty established his strong private interest; (2) wrongful detention creates a high risk of erroneous deprivation of that liberty interest; and (3) the government's interest in detaining Mr. Garcia is minimal given he is not a danger or a flight risk, and because for decades, the government has followed the INA and released discretionarily detained noncitizens like Mr. Garcia. Thus, the *Mathews* test strongly demonstrates that Mr. Garcia's detention violates his procedural due process rights.

101. Thus, Mr. Garcia should be released from the unlawful detention that is violating his procedural due process rights under the Fifth Amendment.

COUNT THREE

VIOLATION OF SUBSTANTIVE DUE PROCESS

U.S. Const. amend. V

102. Mr. Garcia realleges and incorporates by reference each and every allegation contained above.

103. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the [Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690.

104. "This guarantee includes a substantive component that mandates the application of strict scrutiny whenever the government infringes on fundamental liberty interests, regardless of what process the government provides." *Hasan*, 2025 WL 2682255, at *10 (citing *Reno v. Flores*, 507 U.S. 292, 302 (1993)).

105. ICE has failed to identify *any* statutory authority, despite repeated requests, justifying Mr. Garcia's continued detention, further underscoring the entirely arbitrary and unlawful nature of this confinement. DHS's detention of Mr. Garcia without justification or statutory basis is arbitrary and unjustified, in violation of his substantive due process rights.

106. Thus, Mr. Garcia should be released from the unlawful detention that is violating his substantive due process rights under the Fifth Amendment.

PRAYER FOR RELIEF

WHEREFORE, Mr. Garcia respectfully requests that this Court:

1. Exercise jurisdiction over this matter;

2. Declare that Mr. Garcia's detention is pursuant to Section 1226(a);

3. Declare that Mr. Garcia is not an alien "seeking admission" subject to mandatory detention under Section 1225(b)(2);

4. Declare that Mr. Garcia's detention is and has been unlawful, in that it violates the INA and the Due Process Clause of the Fifth Amendment;

5. Issue a Writ of Habeas Corpus ordering Mr. Garcia's immediate release from the custody of Respondents;

6. Enjoin Respondents from further detaining Mr. Garcia without notice and a pre-deprivation hearing before a neutral decision maker pursuant to Section 1226(a);

7. Enjoin Respondents from moving Mr. Garcia outside the jurisdiction of this Court and the United States pending adjudication of this Petition;

8. Enjoin Respondents from moving Mr. Garcia outside the United States pending adjudication of this Petition and full and fair adjudication of Mr. Garcia's immigration case, including any potential appeal;

9. Order that Mr. Garcia be allowed a full opportunity to apply for all forms of relief for which he is eligible, including any appeals;

10. Award Mr. Garcia costs and reasonable attorneys' fees; and

11. Order such other relief as this Court may deem just and proper.[8]

[8] Should this Court schedule a hearing on this Petition, Mr. Garcia and his counsel are readily available with the exception of December 27, 2025 – January 2, 2026, January 6, 2026, and January 15, 2026 – January 21, 2026.

Date: December 17, 2025

Respectfully Submitted,

AKIN GUMP STRAUSS HAUER & FELD LLP

By: *<u>/s/ Dennis Windscheffel</u>*

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VERIFICATION STATEMENT, 28 U.S.C. § 2242

I, Dennis Windscheffel, am submitting this verification on behalf of Mr. Garcia because I am one of Mr. Garcia's attorneys. I have conferred with Mr. Garcia's attorneys in his immigration proceedings related to this case. I am familiar with those proceedings and the records from those proceedings. On the basis of these discussions and documents, I hereby verify that the statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

/s/ Dennis Windscheffel

Dennis Windscheffel