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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

Juan Javier AGURTO-CHALEN,

Petitioner,

– against –

Francisco VENEGAS, Facility Administrator of the El Valle Detention Facility; Miguel Vergara, Director of the Harlingen Field Office of Immigration and Customs Enforcement; Kristi Noem, Secretary of the Department of Homeland Security; Pamela Bondi, Attorney General,

Respondents.

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

No. 25-cv-343

Alien No. [redacted]

INTRODUCTION

1. Juan Javier Agurto-Chalen, Petitioner, entered the United States on April 11, 2024, fleeing persecution in his native Ecuador. Around the time of his entry he was detained by the Department of Homeland Security ("DHS"). But shortly thereafter, DHS chose to release him into the country so that he could present his asylum application to an immigration judge ("IJ"). He took up residence in New York, he stayed out of trouble, and he dutifully attended all of his immigration related appointments.

2. On June 9, 2025, Petitioner appeared at the Broadway Immigration Court in New York, New York, for a preliminary hearing on his asylum application. At that hearing, an attorney for Immigration and Customs Enforcement ("ICE"), a DHS subagency, asked the IJ to dismiss Petitioner's proceedings. Without going into specifics, the ICE attorney noted that circumstances had "changed" and that it did not "want" to continue with the case. Petitioner protested. He had a pending asylum application, and was prepared to file evidence in support thereof. He asked the IJ to hold a hearing on that application where he might testify. The IJ was unmoved. She granted ICE's motion to dismiss in an unreasoned order. As Petitioner left the courtroom that day ICE agents arrested him in the hallway.

3. As of this writing, Petitioner is being held in ICE custody at the El Valle Detention Facility in Raymondville, Texas. He has appealed the IJ's order dismissing removal proceedings to the Board of Immigration Appeals ("BIA"). ICE has taken the position that individuals like Petitioner are subject to mandatory detention under section 235(b) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1225(b). As a result, Petitioner is not permitted to seek release on bond before an IJ.

4. Pursuant to 28 U.S.C. § 2243, Petitioner requests that the Court issue an Order to Show Cause directing the Government to file a return "within three days[,] unless for good cause additional time, not exceeding twenty days, is allowed," providing its legal justification for Petitioner's detention.

5. Because ICE's actions violated Petitioner's right to due process, the Court should order his immediate release. Insofar as the Government maintains that Petitioner is detained under 8 U.S.C. § 1225(b), the Court should reject its novel interpretation of that statute and either order

Petitioner's immediate release or, at the absolute minimum, direct Respondents to provide him with a bond hearing at which ICE must justify his continued detention.

JURISDICTION

6. This action arises under the Constitution of the United States, as well as the INA, 8 U.S.C. § 1101 *et seq.*

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

8. This Court may order relief under the habeas statute, 28 U.S.C. § 2241; the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*; and the All Writs Act, 28 U.S.C. § 1651.

VENUE

9. Venue is proper because Petitioner is detained, and his immediate custodian situated, in Raymondville, Texas, within the territorial jurisdiction of this Court.

PARTIES

10. Petitioner is an Ecuadoran national and asylum applicant who entered the United States on April 11, 2024. He was arrested at the Broadway Immigration Court in New York, New York on June 9, 2025, after attending a preliminary hearing. As of this writing, he is being held by ICE at the El Valle Detention Facility in Raymondville, Texas.

11. Respondent Francisco Venegas is the Facility Administrator, *i.e.*, warden, of the El Valle Detention Facility. As such, he is Petitioner's immediate custodian.

12. Respondent Miguel Vergara is the Director of ICE's Harlingen Field Office. In his official capacity, he is charged with overseeing decisions regarding immigration detention throughout southern Texas. He therefore has constructive custody over Petitioner, in that she can order his release from the El Valle Detention Facility.

13. Respondent Kristi Noem is the Secretary of DHS, which is ICE's parent agency. In her official capacity, she oversees and directs the activities of ICE, including its detention operations in Mississippi and elsewhere. She therefore has constructive custody of Petitioner, in that she can direct ICE to release him from custody.

14. Respondent Pamela Bondi is the Attorney General. In her official capacity, she is charged with making determinations as to removability, asylum eligibility, and immigration custody, all of which are binding on DHS and its components. She therefore has constructive custody of Petitioner, in that she has the capacity to compel ICE to release him.

STATEMENT OF FACTS

15. An Ecuadoran national, Petitioner crossed the southern land border into the United States on April 11, 2024. *See* Exh. A (notice to appear). He fled Ecuador because he had been beaten and threatened with death by a powerful gang. *See* Exh. B (asylum application). When Petitioner appeared for a preliminary hearing on June 9, 2025, an ICE attorney moved to have his asylum case dismissed, stating simply "that the circumstances of the case ha[d] changed after the Notice to Appear was issued to such an extent that continuation is no longer in the best interest of the government. *See* Exh. C at 13:7–9 (hearing transcript). Over Petitioner's strenuous objections, the IJ agreed, concluding she was bound to dismiss proceedings because ICE "want[ed]" her to. *See id.* at 14:8, 16:4–5[1]; *see also* Exh. D (dismissal order).

16. After the IJ dismissed proceedings over his objection, Petitioner went to leave the courtroom, and was immediately arrested by a team of masked ICE agents in the hallway. On August 27, 2025, ICE filed a notice indicating that Petitioner had been transferred a month prior

[1] This was untrue as a matter of BIA precedent. *See Matter of H.N. Ferreira*, 28 I&N Dec. 765, 768 (BIA 2023) (quoting *Matter of G-N-C-*, 22 I&N Dec. 281, 284 (BIA 1998)).

to the El Valle Detention Facility. *See* Exh. E (address notice). He remains detained there as of this writing. *See* Exh. F (ICE detainee locator). His appeal of the IJ's dismissal order remains pending at the BIA. On information and belief, there has been no individualized determination that, since his release by DHS in April of 2024, Petitioner has somehow become a flight risk or danger to his community. Petitioner is not eligible to seek bond before an IJ.

17. Petitioner hereby brings an action in habeas corpus seeking his immediate release from ICE custody. In the alternative, Petitioner asks that this Court order the Government to provide him with a bond hearing at which ICE must justify his continued detention.

LEGAL BACKDROP

18. "[C]ivil immigration detention is typically justified only when a noncitizen presents a risk of flight or danger to the community." *J.A.E.M. v. Wofford*, No. 25 Civ. 1380 (KES), 2025 WL 3013377, at *3 (E.D. Cal. Oct. 27, 2025) (citing *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Padilla v. ICE*, 704 F. Supp. 3d 1163, 1172 (W.D. Wash. 2023)). "A protected liberty interest may arise from a conditional release from physical restraint. Even when a statute allows the government to arrest and detain an individual, a protected liberty interest under the Due Process Clause may entitle the individual to procedural protections not found in the statute." *Id.* (citation omitted) (citing *Young v. Harper*, 520 U.S. 143, 147–49 (1997)). "Due process 'is a flexible concept that varies with the particular situation.' The procedural protections required in a given situation are evaluated using the *Mathews v. Eldridge* factors." *Id.* at *6 (quoting *Zinermon v. Burch*, 494 U.S. 113, 127 (1990), which in turn cites 424 U.S. 319, 335 (1976)).

19. Beginning in May of this year, ICE has pursued an aggressive new enforcement campaign targeting people who are in removal proceedings at their homes, places of business, and even as they attended mandatory immigration court hearings or other immigration appointments.

Individuals have been arrested seemingly without regard to whether they have pending applications for asylum or other relief. This "coordinated operation" is "aimed at dramatically accelerating deportations."[2] These aggressive tactics appear to be motivated by the imposition of a daily quota of 3,000 ICE arrests.[3] In part as a result of this campaign, ICE's arrests of noncitizens with no criminal record have increased more than 800% since before January.[4]

20. One of ICE's tactics has proven especially controversial. Call it the dismissal-and-detention strategy: On the date of a noncitizen's preliminary hearing in immigration court, an ICE attorney moves without notice to have their case dismissed; in the hallway outside, masked ICE agents stand ready to take the person into custody as they leave. Former IJs have reported a significant degree of undue pressure to grant these motions in order to help ICE along.[5]

21. At the same time, the Board of Immigration Appeals ("BIA") has advanced novel interpretations of the immigration detention statutes. In *Matter of Q. Li*, 29 I&N Dec. 66 (BIA

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[2] Arelis R. Hernández and Maria Sacchetti, "Immigrant Arrests at Courthouses Signal New Tactic in Trump's Deportation Push," *Washington Post* (May 23, 2025), *available at* www.washingtonpost.com/immigration/2025/05/23/immigration-court-arrests-ice-trump/; *see also* Hamed Aleaziz, Luis Ferré-Sadurní, and Miriam Jordan, "How ICE is Seeking to Ramp Up Deportations Through Courthouse Arrests," *N.Y. Times* (May 30, 2025), *available at* www.nytimes.com/2025/05/30/us/politics/ice-courthouse-arrests.html.

[3] Ted Hesson and Kristina Cooke, "ICE's Tactics Draw Criticism as it Triples Daily Arrest Targets," *Reuters* (Jun. 10, 2025), *available at* www.reuters.com/world/us/ices-tactics-draw-criticism-it-triples-daily-arrest-targets-2025-06-10/.

[4] José Olivares and Will Craft, "ICE Arrests of Migrants with No Criminal History Surging under Trump," *The Guardian* (Jun. 14, 2025), *available at* www.theguardian.com/us-news/2025/jun/14/ice-arrests-migrants-trump-figures.

[5] *See, e.g.*, Julia Ainsley, "Trump admin tells immigration judges to dismiss cases in tactic to speed up arrests," *NBC News* (Jun. 11, 2025), *available at* www.nbcnews.com/politics/national-security/trump-admin-tells-immigration-judges-dismiss-cases-tactic-speed-arrest-rcna212138; Maurice DuBois et al., "3 immigration judges speak out about their firings: 'It was arbitrary, unfair,'" *CBS Evening News* (Jul. 24, 2025), *available at* www.cbsnews.com/news/immigration-judges-speak-out-firings-arbitrary-unfair/.

2025), it held for the first time that individuals who were paroled into the United States years ago without ever being placed in expedited removal proceedings were subject to mandatory detention under 8 U.S.C. § 1225. Shortly thereafter, it expanded this mandatory detention holding to cover all persons present in the United States without admission, irrespective of their time and manner of entry. *See Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

22. The fundamental unfairness of some of ICE's tactics has not escaped judicial notice. As near as the undersigned can tell, every court to weigh the constitutionality of ICE's notorious "hallway" arrests has found that they at least probably violated due process. *See Hernandez v. Wofford*, No. 25 Civ. 986 (KES), 2025 WL 2420390 (E.D. Cal. Aug. 21, 2025) (granting temporary restraining order), 2025 WL 2624226 (E.D. Cal. Sep. 10, 2025) (preliminary injunction); *Cordero Pelico v. Kaiser*, No. 25 Civ. 7286 (EMC), 2025 WL 2822876 (N.D. Cal. Oct. 3, 2025); *Gonzalez v. Joyce*, No. 25 Civ. 8250 (AT), 2025 WL 2961626 (S.D.N.Y. Oct. 19, 2025); *Patel v. Almodovar*, No. 25 Civ. 15345 (SDW), 2025 WL 3012323 (D.N.J. Oct. 28, 2025); *Francois v. Wamsley*, No. 25 Civ. 2122 (RSM), 2025 WL 3063251 (W.D. Wash. Nov. 3, 2025); *Diallo v. Maldonado*, No. 25 Civ. 5740 (DG), 2025 WL 3158295 (E.D.N.Y. Nov. 12, 2025); *Orozco Acosta*, No. 25 Civ. 9601 (HSG), 2025 WL 3229097 (N.D. Cal. Nov. 19, 2025).

23. And the Government's novel mass detention theory has received a similarly chilly reception before our Nation's district courts. *See, e.g.*, *Hyppolite v. Noem*, No. 25 Civ. 4304 (NRM), 2025 WL 2829511, at *12 (E.D.N.Y. Oct. 6, 2025) ("[S]ince Respondents began to broadly invoke § 1225(b)(2)(A) to justify the mandatory detention of noncitizens who already reside within the United States, well over a dozen federal courts around the country have rejected Respondents' novel and illogical interpretation of the INA." (citing *Lopez Benitez*, 2025 WL 2371588; *Mata Velasquez*, 2025 WL 1953796; *Lepe v. Andrews*, No. 25 Civ. 1163 (KES), 2025

WL 2716910 (E.D. Cal. Sep. 23, 2025); *Barrera v. Tindall*, No. 25 Civ. 541 (RGJ), 2025 WL 2690565 (W.D. Ky. Sep. 19, 2025); *Pablo Sequen v. Kaiser*, No. 25 Civ. 6487 (PCP), 2025 WL 2650637 (N.D. Cal. Sep. 16, 2025); *Pizarro Reyes v. Raycraft*, No. 25 Civ. 12546 (RJW), 2025 WL 2609425 (E.D. Mich. Sep. 9, 2025); *Doe v. Moniz*, No. 25 Civ. 12094 (IT), 2025 WL 2576819 (D. Mass. Sep. 5, 2025); *Garcia v. Noem*, No. 25 Civ. 2180 (DMS), 2025 WL 2549431 (S.D. Cal. Sep. 3, 2025); *Lopez-Campos v. Raycraft*, No. 25 Civ. 12486 (BRM), 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Kostak v. Trump*, No. 25 Civ. 1093 (JE), 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *dos Santos v. Noem*, No. 25 Civ. 12052 (JEK), 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Rocha Rosado v. Figueroa*, No. 25 Civ. 2157 (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted*, 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Gomes v. Hyde*, No. 25 Civ. 11571 (JEK), 2025 WL 1869299 (D. Mass. Jul. 7, 2025))); *see also Echevarria v. Bondi*, No. 25 Civ. 3252 (DWL), 2025 WL 2821282, at *4 (D. Ariz. Oct. 3, 2025) (relying on some of the same cases as *Hyppolite*, while also citing *Hasan v. Crawford*, 25 Civ. 1408 (LMB), 2025 WL 2682255 at *9 (E.D. Va. Sep. 19, 2025); *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1261 (W.D. Wash. 2025); and *Vazquez v. Feeley*, No. 25 Civ. 1542 (RFB), 2025 WL 2676082, at *16 (D. Nev. Sep. 17, 2025)).

24. It is not difficult to see why. Stated succinctly, "Respondents' construction of § 1225(b)(2)(A) disregards the plain meaning of that provision, would render § 1226 and a recent amendment to it superfluous, and is inconsistent with [the] Supreme Court's prior statutory interpretations." *Artiga v. Genalo*, No. 25 Civ. 5208 (OEM), 2025 WL 2829434, at *7 (E.D.N.Y. Oct. 5, 2025) (citing *J.U. v. Maldonado*, No. 25 Civ. 4836 (OEM), 2025 WL 2772765, at *7 (E.D.N.Y. Sept. 29, 2025)).

25. Start with the Supreme Court. The Government's theory conflicts with its precedent, most notably with *Jennings v. Rodriguez*, 583 U.S. 281 (2018), as Judge Edwards in Louisiana (among others) has explained:

> Petitioner is likely to succeed on the merits of his habeas claim. As an "alien already present in the United States," he is subject to Section 1226, not Section 1225, and is thus not subject to mandatory detention. *See Kostak v. Trump*, 2025 WL 2472136, at **2–3 (W.D. La., 2025) (holding that mandatory detention of aliens like Petitioner "under Section 1225 was erroneous..." and that they are instead subject to Section 1226); *see also Lopez Santos v. Noem*, 2025 WL 2642278, at **3–5 (W.D.La., 2025) (Doughty, C.J.) (holding same). What the BIA thinks of the matter, as expressed *In the Matter of Yajure Hurtado*, 29 I&N Dec. 216 (2025), is of no moment, as it is principally *our* job to interpret statutes. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 385 (2024). "And the Court respectfully disagrees with how the BIA reads §§ 1226(a) and 1225(b)(2)(A) in conjunction with one another." *Pizarro Reyes v. Raycraft*, 2025 WL 2609425, at *6 (E.D.Mich., 2025). So does the Supreme Court. *See Jennings*, 583 U.S. at 297–303. And the Court is not going to say—effectively—that there is no difference between the two, when the Supreme Court has said that there is. *See id.* Plainly, "arriving" means "arriving," *see Pizarro Reyes*, 2025 WL 2609425, at *5 (discussing Section 1225), "already present" means "already present," *see Jennings*, 583 U.S. at 303 (discussing Section 1226), and there is no synonymity, nor ambiguity, between.

Ventura Martinez v. Trump, 25 Civ. 1445 (JE), 2025 WL 3124847, at *2 (Oct. 22, 2025) (W.D. La. Oct. 22, 2025) (emphasis in original).[6]

26. The Government's interpretation of section 1225 would also render superfluous recent amendments to section 1226 contained in the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025) ("LRA"), as a chorus of district judges has explained. Congress in the LRA amended section 1226(c) to provide for the mandatory detention of any individual who both "is inadmissible

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[6] A different Louisiana judge was able to reconcile the Government's new approach with *Jennings*, but only by holding that sections 1225 and 1226 are not "mutually exclusive," *Silva Oliveira v. Patterson*, No. 25 Civ. 1463 (DCJ), 2025 WL 3095972, at *5–6 (W.D. La. Nov. 4, 2025), a proposition which the BIA itself has expressly rejected, *see Q. Li*, 29 I&N Dec. at 69 & n.4 ("[A]n applicant for admission who is arrested and detained without a warrant while arriving in the United States, whether or not at a port of entry, and subsequently placed in removal proceedings is detained under section 235(b) of the INA, 8 U.S.C. § 1225(b), and is ineligible for any subsequent release on bond under section 236(a) of the INA, 8 U.S.C. § 1226(a). . . . Once an alien is detained under section 235(b), DHS *cannot convert* the statutory authority governing her detention from section 235(b) to section 236(a)." (emphasis added)).

under paragraph (6)(A), (6)(C), or (7) of [INA] section 212(a)," 8 U.S.C. §1182(a), "and is charged with, is arrested for, is convicted of, admits having committed, or admits committing acts which constitute the essential elements of any burglary, theft, larceny, shoplifting, or assault of a law enforcement officer offense, or any crime that results in death or serious bodily injury to another." LRA § 2. This new ground of section 1226(c) mandatory detention forms the core of the LRA. But if we accept the Government's reading of section 1225, then individuals covered by at least two of the cross-referenced paragraphs of section 1182(a) would *already* have been subject to mandatory detention under section 1225(b). *See Gomes*, 2025 WL 1869299, at *7 ("After all, a noncitizen who is present in the United States without being admitted or paroled, 8 U.S.C. § 1182(a)(6)(A), or who lacks requisite documentation, *id.* § 1182(a)(7), is unlikely to prove to an examining immigration officer that he 'is clearly and beyond a doubt entitled to be admitted.'" (quoting 8 U.S.C. § 1225(b)(2)(A))).[7]

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[7] The LRA is not a lengthy piece of legislation. It consists entirely of this new mandatory detention ground, *see* LRA § 2, together with a series of jurisdictional amendments designed to waive sovereign immunity in order to permit state attorneys general to sue the federal government over its release decisions, *see id.* § 3. So, it is little exaggeration to say that holding "that § 1225 applies to noncitizens who are arrested on a warrant while residing in the United States would render § 1226(c)(1)(E)'s criminal conduct requirement superfluous, thereby 'nullify[ing] a statute that Congress enacted this very year.'" *Artiga*, 2025 WL 2829434, at *7 (quoting *Gomes*, 2025 WL 1869299, at *7 ("Such an interpretation, which would largely nullify a statute Congress enacted this very year, must be rejected.")) (alteration in *Artiga*).

District court decisions favoring the Government have not adequately addressed the LRA problem. Some don't even mention the LRA, *see, e.g.*, *Silva Oliveira*, *supra*. One stated without further elaboration that the LRA (which it erroneously refers to as the "Riley Laken Act") "simply removed the Attorney General's detention discretion for aliens charged with specific—but not all—crimes." *Chavez v. Noem*, No. 25 Civ. 2325 (CAB), 2025 WL 2730228, at *5 (S.D. Cal. Sep. 24, 2025). But this elides the key issue. The LRA triggers upon the satisfaction of two necessary conditions: (1) lack of admission, and (2) qualifying criminal conduct. If the Government is correct that anyone meeting the first condition is mandatorily detained under section 1225, then it will never logically matter what section 1226 says about "the Attorney General's detention discretion" with respect to those satisfying both conditions. *Id.* Another approach was had in *Cirrus Rojas v. Olson*, which adopted the Government's claim that "legislation passed in 2025 has little bearing on the meaning of legislation enacted in 1996." No. 25 Civ. 1437 (BHL), 2025 WL 3033967, at *9 (E.D. Wis. Oct. 30, 2025). But "[t]his argument profoundly mistakes [the judicial] role. Where a statutory term presented . . . for the first time is ambiguous, [courts] construe it to contain that permissible meaning which fits most logically and comfortably into the body of both previously *and subsequently* enacted law. [Courts] do so not because that precise accommodative meaning is what the lawmakers must

27. The Government's new mandatory detention theory is also inconsistent with its own behavior over the past three decades. *See, e.g.*, *Chogllo Chafla v. Scott*, No. 25 Civ. 437 (SDN), 2025 WL 2688541, at *8 (D. Me. Sept. 22, 2025) ("The BIA's decision in *Yajure Hurtado* also is at odds with decades of DHS's own practices, which the opinion acknowledges."); *see also Dames & Moore v. Regan*, 453 U.S. 654, 686 (1981) ("[A] systematic, unbroken, executive practice, long pursued to the knowledge of the Congress and never before questioned . . . would raise a presumption that the action had been taken in pursuance of its consent." (quoting *United States v. Midwest Oil Co.*, 236 U.S. 459, 474 (1915)) (alterations adopted)).

28. Perhaps most importantly, the Government's interpretation impermissibly reads entire phrases out of the statute:

> To understand why, start with the text of the statute. It explicitly includes the phrase "seeking admission." Because "courts must give effect, if possible, to every clause and word of a statute," that phrase must take on some meaning that wouldn't make it "superfluous," considering the separate term "applicant for admission." *Loughrin v. United States*, 573 U.S. 351, 358 (2014) (internal quotations omitted). What, then, does it mean to "seek admission?" The Immigration and Naturalization Act (INA) defines "admission" as "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A). And "entry," which is undefined, can be given its "ordinary, contemporary, common meaning." *Star Athletica, LLC v. Varsity Brands, Inc.*, 580 U.S. 405, 414 (2017) (internal quotations omitted); *United States v. Santos*, 553 U.S. 507, 511 (2008) ("When a term is undefined, we give it its ordinary meaning."). That meaning is "entering into . . . (a country)," which is "[t]o come or go in." *Entry*, Oxford English Dictionary (2d ed. 1989); *Enter*, Oxford English Dictionary (2d ed. 1989). In a more specific legal context, it also means going into a place. *Entry*, Black's Law Dictionary (6th ed. 1990) ("any coming of an alien into the U.S."). And "seeking" is written in the present-progressive tense, which "is used to refer to an action or a state that is continuing to happen." *Progressive Tense*, Merriam Webster Online, https://www.merriam-webster.com/dictionary/progressive%20tense (last visited October 27, 2025). Putting that all together, "seeking admission" requires an alien to *continue* to want to *go into* the country. The

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have had in mind (how could an earlier Congress know what a later Congress would enact?), but because it is [their] role to make sense rather than nonsense out of the *corpus juris*." *W. Va. Univ. Hosp., Inc. v. Casey*, 499 U.S. 83, 100–01 (1991) (citations omitted, emphasis added).

> problem, as J.G.O. points out, is that he's already here; you can't go into a place where you already are.
>
> The government's attempt to explain away this verbiage backfires. It points to another part of the statute that reads: "aliens who are applicants for admission or otherwise seeking admission." Dkt. 26 at 9 (citing 8 U.S.C. § 1225(a)(3)). That's supposed to suggest that the two categories are coterminous. But that's not how lists work or how the word "or" works. Its "ordinary use is almost always disjunctive, that is, the words it connects are to be given separate meanings." *Loughrin*, 573 U.S. at 357 (quoting *United States v. Woods*, 571 U.S. 31, 45 (2013)). Similarly, "otherwise" means "something or anything else." *Otherwise*, Merriam Webster's Collegiate Dictionary (10th ed. 2001). Taken together, "or otherwise" is "used to refer to something that is different from something already mentioned." *Or otherwise*, Merriam Webster Online, https://www.merriam-webster.com/dictionary/or% 20otherwise (last visited October 27, 2025). On top of that, this is just another example of the government's construction inviting surplusage into the statute. That Congress chose to include this additional phrase—"seeking admission"—not once but (according to the government) multiple times suggests that it must mean something distinct.

See, e.g., *J.G.O. v. Francis*, 25 Civ. 7233 (AS), 2025 WL 3040142, at *3 (S.D.N.Y. Oct. 28, 2025) (emphasis and alterations in original).

29. In this particular district, there is a split of authority. Two judges have rejected the Government's novel interpretation for essentially the reasons we have just discussed. *See Buenrostro-Mendez v. Bondi*, No. 25 Civ. 3726 (LHR), 2025 WL 2886346 (S.D. Tex. Oct. 7, 2025); *Cruz Gutierrez v. Thompson*, No 25 Civ. 4695 (GCH), 2025 WL 3187521 (S.D. Tex. Nov. 14, 2025). One judge has adopted the Government's position. *See Cabanas v. Bondi*, No. 25 Civ. 4830 (CE), 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025). With respect to Judge Eskridge, Petitioner submits that Judges Rosenthal and Hanks have the better of this particular argument. *Cf. id.*, at *5 ("recogniz[ing] that a great many decisions in the district courts agree with the position of Petitioner," and acknowledging at least "thirty" such cases).

FIRST CLAIM FOR RELIEF
Violation of Fifth Amendment Right to Due Process

30. Petitioner hereby repeats and realleges all preceding allegations in the instant Petition as if fully set forth herein.

31. Applying the *Mathews* factors in this case, Petitioner's unexplained rearrest outside of an immigration courtroom violates his Fifth Amendment right to due process.

32. "Here, the first factor weighs heavily in Petitioner's favor, as the official action has deprived him of his physical liberty." *Bethancourt Soto*, No. 25 Civ. 16200, 2025 WL 2976572, at *8 (D.N.J. Oct. 22, 2025) (citing *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004) ("[T]he most elemental of liberty interests [is] the interest in being free from physical detention by [the] government.")); *Zadvydas*, 533 U.S. at 690 ("Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty [the Due Process Clause] protects.")).

33. "Similarly, the second *Mathews* factor weighs heavily in Petitioner's favor, as he is presently and *erroneously* detained under the mandatory detention provisions of § 1225, without an opportunity for a bond hearing." *Bethancourt Soto*, 2025 WL 2976572, at *8 (emphasis in original). "[T]he risk of an erroneous deprivation of liberty is high where, as here, the petitioner has not received any bond or custody redetermination hearing." *Hernandez*, 2025 WL 2420390, at *5 (cleaned up) (quoting *A.E. v. Andrews*, 25 Civ. 107 (KES), 2025 WL 1424382, at *5 (E.D. Cal. May 16, 2025)).

34. Turning to "the third *Mathews* factor, the Government's interests in detaining noncitizens are typically 'ensuring the appearance of aliens at future immigration proceedings' and 'preventing danger to the community.'" *Bethancourt Soto*, 2025 WL 2976572, at *8 (quoting *Zadvydas*, 533 U.S. at 690). Here, the third factor favors Petitioner. Even if "the government has

a strong interest in enforcing the immigration laws, the government's interest in detaining petitioner without a hearing is 'low.'" *J.A.E.M.*, 2025 WL 3013377, at *7 (quoting *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019)). "In immigration court, custody hearings are routine and impose a 'minimal' cost." *Id.* (quoting *Doe v. Becerra*, No. 25-Civ. 647 (DJC), 2025 WL 691664, at *6 (E.D. Cal. Mar. 3, 2025)). And "[t]he government's interest is further diminished where a person has consistently appeared for his immigration hearings and does not have a criminal record, as is the case here" *Hernandez*, 2025 WL 2420390, at *6 (cleaned up) (quoting *Pinchi v. Noem*, No. 25 Civ. 5632 (RFL), 2025 WL 1853763, at *2 (N.D. Cal. Jul. 4, 2025)).

35. Moreover, at this stage, Petitioner's detention has become unreasonably prolonged. *Cf. Zadvydas*, *supra*.

36. In light of the foregoing, the Government should be ordered to release Petitioner immediately, and enjoined from rearresting him absent a pre-deprivation custody redetermination hearing. *Cf. id.*, at *8; *see also Cordero Pelico*, 2025 WL 2822876, at *17; *Gonzalez*, 2025 WL 2961626, at *5.

SECOND CLAIM FOR RELIEF
Violation of Section 236(a) of the INA, 8 U.S.C. § 1226(a)

37. Petitioner hereby repeats and realleges all preceding allegations in the instant Petition as if fully set forth herein.

38. The Government appears to take the position that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b). Because such a reading of the statute "(1) disregards the plain meaning of section 1225(b)(2)(A); (2) disregards the relationship between sections 1225 and 1226; (3) would render a recent amendment to section 1226(c) superfluous; and (4) is inconsistent with decades of prior statutory interpretation and practice," *Lepe*, 2025 WL 2716910, at *4, the Court should reject it, as a chorus of district judges throughout the Nation has done, *cf. Buenrostro-*

Mendez, 2025 WL 2886346, at *3 ("The court need not repeat the 'well-reasoned analyses' contained in these opinions and instead simply notes its agreement." (quoting *Chogllo Chafla*, 2025 WL 2688541, at *5)).

39. Because Petitioner's detention was carried out pursuant to a flawed reading of the INA, it should be considered unreasonable *ab initio* and the Government should be ordered to release Petitioner immediately. *See, e.g.*, *Zumba v. Bondi*, No. 25 Civ. 14626 (KSH), 2025 WL 2753496, at *11 (D.N.J. Sep. 26, 2025) ("For the reasons set forth above, petitioner's mandatory detention under § 1225 violates the INA and the Due Process Clause of the Fifth Amendment. The Court grants the writ of habeas corpus and orders respondents to release petitioner from detention within 24 hours. Following her release, respondents are permanently enjoined from rearresting or otherwise detaining petitioner under § 1225 and may not arrest or otherwise detain petitioner under § 1226(a) for 14 days."); *Bethancourt Soto*, 2025 WL 2976572, at *9 (citing *Zumba*, *supra*).

40. At a bare minimum, and in the alternative, the Court should declare that Petitioner's custody is governed by 8 U.S.C. § 1226(a), and direct the Government to provide him with a bond hearing before an IJ and release him absent a showing that he is a flight risk or danger to the community. *See Ayala Amaya*, 2025 WL 3033880, at *3 ("Accordingly, I find that petitioner's mandatory detention pursuant to § 1225(b)(2)(A) violates the laws of the United States and petitioner's due process rights. Respondents are ordered to treat petitioner as detained under § 1226(a) and provide him with an individualized bond hearing."); *see also Buenrostro-Mendez*, 2025 WL 2886346, at *4 ("The court orders the respondents to either hold a bond hearing under § 1226 within 14 days of this order, . . . or release him.").

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that the Court:

(1) Assume jurisdiction over this petition;

(2) Order Respondents to show cause within three days (or in no event more than twenty days) why the Petition should not be granted;

(3) Declare Petitioner's ongoing detention to be violative of 8 U.S.C. § 1226 as well as the Due Process Clause of the Fifth Amendment;

(4) Issue a preliminary injunction or writ of habeas corpus directing Respondents to immediately release Petitioner, or in the alternative to afford him a bond hearing within fourteen days or else release him; and

(5) Provide such other relief as the Court deems just and proper.

Dated: December 18, 2025
Kew Gardens, New York

Reuben S. Kerben, Esq.
Counsel for Petitioner

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

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

Dated this 18th day of December, 2025.

Reuben S. Kerben, Esq.
Counsel for Petitioner

Table of Exhibits

Exh. A: Form I-862, Notice to Appear (Apr. 11, 2024)

Exh. B: Form I-589, Application for Asylum and Withholding of Removal (Jun. 13, 2024)

Exh. C: Transcript of Immigration Court Hearing (Jun. 9, 2025)

Exh. D: IJ Order on Motion to Dismiss (Jun. 9, 2025)

Exh. E: Form I-830, Notice to EOIR: Alien Address

Exh. F: ICE Detainee Locator (accessed Dec. 18, 2025)