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

FERNANDO GARCIA TOBON Petitioner v. GRANT DICKEY and RAY THOMPSON, *in their official capacity* as Wardens or Facility Administrators of the Joe Corley Processing Center, Detention Facility; BRET BRADFORD, U.S. Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations (ERO) Field Office Director for the Houston Field Office; TODD M. LYONS, *in his official capacity* as Acting Director, Immigration and Customs Enforcement, U.S. Department of Homeland Security; KRISTI NOEM, *in her official capacity* as Secretary U.S. Department of Homeland Security; and PAMELA BONDI, *in her official capacity* as Attorney General of the United States; Respondents	EMERGENCY PETITION FOR HABEAS CORPUS CASE No: _____ DHS File No. [redacted]

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

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TO THE HONORABLE JUDGE PRESIDING:

Petitioner, Fernando Garcia Tobon, by and through his attorney of record, Roberto M. Hinojosa, respectfully applies to this Honorable Court for a Writ of Habeas Corpus under 28

U.S.C. § 2241. The District Court has jurisdiction to consider this Petition under U.S. CONST. art. I, § 9, cl. 2 (Suspension Clause), 28 U.S.C. § 2241 (habeas corpus), and 28 U.S.C. § 1331 (federal question). This Court may also issue declaratory and injunctive relief under the Declaratory Judgment Act, 28 U.S.C. § 2201, and has authority under the All Writs Act, 28 U.S.C. § 1651, to grant all relief necessary to protect its jurisdiction.

INTRODUCTION

1. Petitioner, Fernando Garcia Tobon, is in the physical custody of Respondents at the Joe Corley Processing Center, Detention facility located at 500 Hilbig Rd., Conroe Texas 77301.[1] He now faces unlawful detention because the Department of Homeland Security (DHS) and the Executive Office of Immigration Review (EOIR) have concluded that the Immigration court has no jurisdiction under *Matter of Yajure Hurtado*, 29 1&N Dec. 216 (BIA 2025) to entertain Petitioner's request for bond relief under 8 U.S.C. § 1226(a) and rather classify him under 8 U.S.C. § 1225.

2. Petitioner is charged with having entered the United States without inspection under 8 U.S.C. §1182(a)(6)(A)(i) and as an immigrant who at the time of application for admission lacked valid entry documents under 8 U.S.C. § 1182(a)(7)(A)(i)(I).[2] While none of these charges justify mandatory detention, it is clear from the facts as stated in the NTA that Petitioner is not an Applicant for admission at this time, and therefore, 8 U.S.C. § 1182(a)(7)(A)(i)(I) is not applicable.

3. Petitioner sought a custody redetermination before an Immigration Judge ("IJ"). On November 26, 2025, the IJ found no jurisdiction to consider Petitioner's bond request,

[1] See Exhibit A.
[2] Immigration Counsel for Petitioner denied the charge under 8 U.S.C. § 1182(a)(7)(A)(i)(I).

pursuant to *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025) and in the alternative the IJ found that Petitioner was a danger to the community because he has a pending felony charge for deadly conduct and is a flight risk.[3]

4. Petitioner's detention on the basis that the IJ found no jurisdiction pursuant to *Matter of Yajure Hurtado* violates the plain language of the Immigration and Nationality Act (INA). Section 8 U.S.C. § 1225(b)(2)(A) does not apply to individuals like Petitioner who previously entered without inspection and have been residing in the United States for over 2 years. Instead, such individuals are subject to a different statute, 8 U.S.C. § 1226(a) that allows for release on conditional parole or bond. That statute expressly applies to people who, like Petitioner, are charged as inadmissible for having entered the United States without inspection.

5. Petitioner's detention on alternative grounds was made without an individualized *Matter of Joseph*, 22 I. & N. Dec. 799 (BIA 1999) hearing. The Immigration Judge violated due process by not giving Petitioner an individualized hearing on the Matter and finding him to be a danger to the community and a flight risk without any basis to do so other than a pending felony charge for deadly conduct, for which Petitioner has not been found to be guilty.

6. Petitioner filed a "Motion To Reconsider Bond Determination Based On New Controlling Class Action And Request For Full Evidentiary Bond Hearing" on November

[3] See Order of Immigration Judge Denying Bond based on No Jurisdiction and an alternative finding of danger to the Community and a flight risk, made without an individualized hearing, at Exhibit B, and additionally see Petitioner's criminal record from Madison County Sherriff's Office in Texas and the letter addressed to Petitioner from the 12th Judicial District Court at Exhibit C.

26, 2025.[4] To date no individualized Bond hearing has been set nor has a decision on the "Motion to Reconsider" been issued.[5] Pursuant to *Matter of Yajure Hurtado* any further appeals or filings regarding "Bond Determination" will be futile.

7. Respondents' new legal interpretation is plainly contrary to the statutory framework and contrary to decades of agency practice applying 8 U.S.C. § 1226(a) to people like Petitioner.

8. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be released within one day, or alternatively, unless Respondents provide a bond hearing under 8 U.S.C. § 1226(a), within seven days.

9. Petitioner's continued detention is in violation of his Fifth Amendment rights to substantive and procedural due process.

10. Accordingly, Petitioner seeks declaratory relief establishing he is subject to detention under 8 U.S.C. § 1226(a) and its implementing regulations and is therefore entitled to an individualized custody determination following apprehension by the DHS and, if not released, a bond determination by the Immigration Court. Furthermore, Petitioner is a member of the certified class of *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025) and a beneficiary of the partial summary judgement in *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3289861, at *11 (C.D. Cal.

[4] See "Motion To Reconsider Bond Determination Based On New Controlling Class Action And Request For Full Evidentiary Bond Hearing" filed with the Immigration Court on November 26, 2025 (not including the original exhibits with the Motion) at Exhibit D.
[5] See EOIR Case Portal Court Information sheet at Exhibit E.

Nov. 20, 2025) and therefore he should be ordered released by Respondents within one day.

CUSTODY

11. Petitioner is currently in the custody of ICE at the Joe Corley Processing Center, Detention facility located at 500 Hilbig Rd., Conroe Texas 77301. He is therefore in "'custody' of [the DHS] within the meaning of the habeas corpus statute." *Jones v. Cunningham*, 371 U.S. 236, 243 (1963).

JURISIDICTION

12. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Joe Corley Processing Center, Detention facility located at 500 Hilbig Rd., Conroe Texas 77301.

13. This Court has jurisdiction under U.S. CONST. art. I, § 9, cl. 2 (Suspension Clause), 28 U.S.C. §2241 (habeas corpus), and 28 U.S.C. §1331 (federal question).

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

VENUE

15. Venue is proper in this district and division pursuant to 28 U.S.C. § 2241(a) and 28 U.S.C. § 1391(b)(2) and (e)(l) because Petitioner is detained within this district at the Joe Corley Processing Center, Detention facility located at 500 Hilbig Rd., Conroe Texas 77301, which is within the U.S. District Court for the Southern District of Texas, Houston Division.

PARTIES

16. Petitioner Fernando Garcia Tobon is a native and citizen of Mexico, and has resided in the U.S. since 2002.[6] He is currently detained by ICE at the Joe Corley Processing Center, Detention Facility located at 500 Hilbig Rd., Conroe Texas 77301.

17. Respondents Grant Dickey and Ray Thompson are sued in their official capacity as Wardens or Facility Administrators of the Joe Corley Processing Center, Detention Facility. In their official capacity, Mr. Dickey and Mr. Ray are the Petitioner's immediate custodians.

18. Respondent Bret Bradford is sued in his official capacity as Field Office Director, Houston Field Office, Enforcement and Removal Operations, U.S. Immigration & Customs Enforcement ("ICE"). In his official capacity, Respondent Bret Bradford is a legal custodian of Petitioner.

19. Respondent Todd Lyons is sued in his official capacity as Acting Director of ICE. As the Acting Director of ICE, Respondent Lyons is a legal custodian of Petitioner.

20. Respondent Kristi Noem is sued in her official capacity as Secretary of Homeland Security. As the head of the Department of Homeland Security, the agency tasked with enforcing immigration laws, Secretary Noem is Petitioner's ultimate legal custodian.

21. Respondent Pamela Bondi is sued in her official capacity as the Attorney General of the United States. As Attorney General, she has authority over the Department of Justice and is charged with faithfully administering the immigration laws of the United States.

[6] See Notice to Appear (NTA) dated October 7, 2025 at Exhibit F and Elkins High School "Texas Academic Record" dated January 22, 2002 at Exhibit G.

LEGAL BACKGROUND AND ARGUMENT

22. First, under Section 1226(a), noncitizens arrested and detained "[o]n a warrant issued by the Attorney General" are subject to discretionary detention. The Attorney General (1) "may continue to detain the arrested alien," (2) "may release the alien on . . . bond of at least $1,500," or (3) "may release the alien on . . . conditional parole." 8 U.S.C. §§ 1226(a)(1)-(2). After an arresting immigration officer makes an initial custody determination, noncitizens can request a bond hearing before an IJ, unless they have been arrested, charged with, or convicted of certain crimes and are subject to mandatory detention. See 8 U.S.C. §§ 1226(a), 1226(c) (listing grounds for mandatory detention); see also 8 C.F.R. §§ 1003.19(a) (immigration judges may review custody determinations made by DHS), 1236.1(d) (same).

23. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) as well as other recent arrivals deemed to be "seeking admission" under § 1225(b)(2).

24. Third, the INA authorizes detention of noncitizens who have received a final order of removal, including those in withholding-only proceedings. See 8 U.S.C. §§ 1231(a)-(b).

25. For decades, long-term residents of the U.S. who entered without inspection and were subsequently apprehended by ICE in the interior of the country have been detained pursuant to 8 U.S.C. § 1226 and entitled to bond hearings before an IJ, unless barred from doing so due to their criminal history.

26. In July 2025, however, ICE began asserting that all individuals who entered without inspection should be considered "seeking admission" and therefore subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A).

27. On September 5, 2025, the BIA issued a precedential decision adopting this interpretation, despite its departure from the INA's text, federal precedent, and existing regulations. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). Federal courts across each district in Texas have uniformly rejected the Government's interpretation of § 1225(b)(2)(A) when applied to long-term residents apprehended in the interior. See *Buenrostro-Mendez v. Bondi*, No. H-25-3726, 2025 U.S. Dist. LEXIS 201967 (S.D. Tex. 2025) (rejecting *Yajure Hurtado* as inconsistent with statutory text, structure, legislative history, and decades of agency practice); *Carlos v. Bondi*, No. 9:25-CV-00249-MJT-ZJH, 2025 U.S. Dist. LEXIS 229093 (E.D. Tex. 2025) (holding that interior arrests fall under § 1226(a)); *Parada-Hernandez v. Johnson*, No. 3:25-cv-2729-K-BN, 2025 U.S. Dist. LEXIS 249952 (N.D. Tex. 2025) (magistrate judge recommending habeas relief because § 1226(a), not § 1225(b)(2), governs detention of long-term residents), report and recommendation adopted, *Parada-Hernandez v. Johnson*, No. 3:25-cv-2729-K-BN, 2025 U.S. Dist. LEXIS 234517 (N.D. Tex. 2025) (district judge adopting findings in full). Additional Texas courts agree. See *Lopez-Arevelo v. Bondi*, No. 4:25-cv-1999, 2025 WL 2691828 (S.D. Tex. Sept. 30, 2025); *Covarrubias v. Vergara*, No. 5:25-CV-112, 2025 U.S. Dist. LEXIS 206523 (S.D. Tex. 2025); *Cortina v. De Anda-Ybarra*, No. EP-25-CV-00523-DB, 2025 U.S. Dist. LEXIS 226367 (W.D. Tex. 2025).

28. Courts nationwide have reached the same conclusion. See *Belsai D.S. v. Bondi*, No. 25-cv-3682, 2025 WL 2802947 (D. Minn. Oct. 1, 2025); *Rodriguez v. Bostock*, No. 3:25-cv-5240, 2025 WL 2782499 (W.D. Wash. Sept. 30, 2025). See also *Sampiao v. Hyde*, 2025 WL 2607924 (D. Mass. Sept. 9, 2025) (rejecting *Yajure Hurtado*'s interpretation); *Leal-Hernandez v. Noem*, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Lopez Benitez v. Francis*,

2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Jimenez v. FCI Berlin, Warden*, No. 25-cv-326-LM-AJ (D.N.H. Sept. 8, 2025); *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Cuevas Guzman v. Andrews*, 2025 WL 2617256, at *3 n.4 (E.D. Cal. Sept. 9, 2025) (distinguishing *Yajure Hurtado*).

29. These courts uniformly hold that § 1226(a), not § 1225(b), governs detention of individuals like Petitioner—long-term residents apprehended in the interior who are not "seeking admission" in any present sense.

30. After *Loper Bright v. Raimondo*, 603 U.S. 369 (2024), courts no longer defer to the BIA's interpretation of statutes under *Chevron, U.S.A., Inc. v. NRDC, Inc.*, 467 U.S. 837 (1984), commonly known as the *Chevron* doctrine. This Court must interpret the statute independently. Here, the BIA's reading conflicts with the statutory text, long-standing regulations, and binding precedent.

31. Sections 8 U.S.C. §§ 1225(b) and 1226(a) were enacted together as part of IIRIRA in 1996. Following IIRIRA's passage, EOIR issued regulations clarifying that noncitizens who entered without inspection are eligible for bond and custody review under 8 U.S.C. § 1226(a). See *Inspection and Expedited Removal of Aliens*, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) (stating that individuals present without admission or parole are eligible for bond and bond redetermination).

32. Congress later amended 8 U.S.C. § 1226(c) to add mandatory detention for noncitizens who have not been admitted, including those charged under 8 U.S.C. § 1182(a)(6)(A). This confirms that such individuals are otherwise detained under 8 U.S.C. § 1226(a). The Supreme Court has repeatedly distinguished 8 U.S.C. § 1225(b) as applying to individuals seeking entry at the border, and 8 U.S.C. § 1226 as applying to individuals already in the

United States pending the outcome of removal proceedings. *Jennings v. Rodriguez*, 583 U.S. 281, 297-99 (2018).

33. Petitioner entered the United States without inspection more than twenty-two years ago. He is not coming into the United States or seeking admission in any present sense. See 8 C.F.R. § 1.2. Courts have relied on similar statutory context to find that 8 U.S.C. § 1225(b) does not apply to interior arrests. See *Martinez v. Hyde*, 2025 WL 2084238, at *6 (D. Mass. July 24, 2025); *Al Otro Lado v. McAleenan*, 394 F. Supp. 3d 1168, 1200 (S.D. Cal. 2019); and *Buenrostro-Mendez v. Bondi*, No. H-25-3726, 2025 U.S. Dist. LEXIS 201967 (S.D. Tex. 2025).

34. Accordingly, the mandatory detention provision of 8 U.S.C. § 1225(b)(2) should not apply to Petitioner, who entered the U.S. over twenty-two years before he was apprehended in the interior of the country.

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

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

37. Nonetheless, the Executive Office for Immigration Review and its subagency, the Immigration Court and the Department of Homeland Security (DHS) have blatantly refused to abide by the declaratory relief and have unlawfully ordered that Petitioner be denied the opportunity to be released on bond. On November 26, 2025, the Immigration Judge denied Petitioner's bond request, despite the fact that *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3289861, at *11 (C.D. Cal. Nov. 20, 2025) and *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025) were brought to the attention of the court in a "Motion to Reconsider".

38. The district court certified the following Bond Eligible Class: 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.

39. Petitioner is a member of the Bond Eligible Class, as he:

    a) does not have lawful status in the United States and is currently detained at the Joe Corley Processing Center, Detention Facility. He was apprehended by immigration authorities on or about October 7, 2025, after being arrested for an allegation of discharging a firearm—a third degree felony in Texas called Deadly Conduct—by the Madison County Sheriff;

b) entered the United States without inspection over twenty-two years ago and was not apprehended upon arrival, *cf. id.*; and

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

STATEMENT OF FACTS AND PROCEDURAL HISTORY

40. Petitioner, Fernando Garcia Tobon, is a 39-year-old native and citizen of Mexico and does not have lawful status in the United States.

41. He entered United States without inspection on or around January 2002, at the age of 15, and has lived in the U.S. since that time.

42. Petitioner's criminal history involves an allegation that has not been proven beyond reasonable doubt as of yet, and is not and was not subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security made an initial custody determination.

43. Petitioner came into ICE custody on or about October 7, 2025, after being arrested for an allegation of discharging a firearm—a third degree felony in Texas called Deadly Conduct—by the Madison County Sheriff.[7]

44. Petitioner was served with a Notice to Appear (NTA) on October 7, 2025, and placed into removal proceedings under section 240 of the Immigration and Nationality Act (8 U.S.C. § 1229a).[8]

45. Petitioner is currently in the custody of ICE at the Joe Corley Processing Center, Detention Facility located at 500 Hilbig Rd., Conroe Texas 77301.

[7] See Petitioner's criminal record from Madison County Sherriff's Office in Texas and the letter addressed to Petitioner from the 12th Judicial District Court at Exhibit C.
[8] See Notice to Appear (NTA) dated October 7, 2025 at Exhibit F.

46. Petitioner sought a custody redetermination before an Immigration Judge ("IJ"). On November 25, 2025 the IJ found no jurisdiction to consider Petitioner's bond request, pursuant to *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025) and in the alternative it found that Petitioner was a danger to the community because he has a pending felony charge for deadly conduct and is a flight risk. The IJ made the alternative finding in the case of Petitioner without giving a hearing or an opportunity to be heard—in violation of due process pursuant to the U.S. CONST. amend. V. The IJ was made aware that Petitioner was a member of the certified class of *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025) and the partial summary judgment of *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3289861, at *11 (C.D. Cal. Nov. 20, 2025) in a "Motion To Reconsider Bond Determination Based On New Controlling Class Action And Request For Full Evidentiary Bond Hearing" filed with the Immigration Court on November 26, 2025.[9]

EXHAUSTION OF ADMINISTRATIVE REMEDIES

47. A constitutional challenge does not require exhaustion. Exhaustion is required only when Congress specifically mandates it. *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992). Here, no statute specifically requires exhaustion before seeking habeas relief under 28 U.S.C. § 2241.

48. Even if exhaustion was prudentially required, it should be excused because further administrative steps would be futile. Petitioner's request for a custody redetermination was denied by the Immigration Judge on November 26, 2005 based on a finding that the

[9] See Exhibit D.

Immigration Court lacked jurisdiction over Petitioner's custody request and in the alternative it found that Petitioner was a danger to the community because he has a pending felony charge for deadly conduct and is a flight risk—the alternative finding in the case of Petitioner was made without a hearing or an opportunity to be heard in violation of due process as required by the U.S. CONST. amend. V. Given the BIA's precedential decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), holding that noncitizens who entered without inspection are subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A), and the IJ's alternative finding without a hearing or an opportunity to be heard, any appeal to the BIA would be futile. See *Garza-Garcia v. Moore*, 539 F. Supp. 2d 899, 906–07 (S.D. Tex. 2007) (explaining that even when DHS asserts that a respondent is subject to mandatory detention, the Immigration Judge retains authority to examine that claim in a *Matter of Joseph* hearing).

49. Additionally, the agency does not have jurisdiction to review Petitioner's claim of unlawful custody in violation of his due process rights, and it would therefore be futile for him to pursue administrative remedies. *Reno v Amer.-Arab Anti-Discrim. Comm.,* 525 U.S. 471 (1999) (finding exhaustion to be a "futile exercise because the agency does not have jurisdiction to review" constitutional claims).

50. Moreover, it would be futile for Petitioner to seek conditional parole from DHS under 8 U.S.C. § 1182(d)(5). DHS has taken the position—based on *Matter of Yajure Hurtado*—that individuals charged under 8 U.S.C. § 1182(a)(6)(A)(i) are subject to mandatory detention under § 1225(b)(2)(A) and therefore categorically ineligible for release except in cases of narrow, urgent humanitarian need. Because DHS has adopted a blanket policy of treating long-term residents apprehended in the interior as "arriving aliens" subject to

mandatory detention, any request for parole would be denied as a matter of course, rendering the pursuit of such relief futile. See *McCarthy v. Madigan*, 503 U.S. 140, 147–48 (1992) (exhaustion excused where the agency "has predetermined the issue" or where resort to administrative remedies would be "clearly useless").

COUNT ONE
FIFTH AMENDMENT – DUE PROCESS
CONTINUED AND UNJUSTIFIED DETENTION

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

52. Petitioner's continued detention violates his rights to substantive and procedural due process guaranteed by U.S. CONST. amend. V.

53. The Due Process Clause of the Fifth Amendment provides that "No person shall be deprived of life, liberty, or property without due process of law." U.S. CONST. amend. V.

54. As a noncitizen physically present in the United States for well over two years, Petitioner is entitled to the protections of the Due Process Clause. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) ("the Due Process Clause applies to all persons within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent"). Any deprivation of this fundamental liberty interest must be accompanied by adequate procedural safeguards and a sufficiently strong justification to outweigh the significant loss of liberty. *Id.* at 690.

55. Respondents have deprived Petitioner of this fundamental liberty interest by detaining him since approximately October 7, 2025, without any constitutionally adequate opportunity to demonstrate that he is not a danger to the community nor a flight risk.

56. Petitioner has been denied any custody redetermination before an Immigration Judge (IJ). The IJ refused to entertain the request for bond as a matter of law, treating Petitioner's ineligibility for bond as a foregone conclusion rather than allowing him to be heard on the merits. Furthermore, a "Motion To Reconsider Bond Determination Based On New Controlling Class Action And Request For Full Evidentiary Bond Hearing" was filed with the Immigration Court on November 26, 2025, and no date has been set to actually give Petitioner an opportunity to be heard in a fair and impartial hearing. A meaningful hearing is the essence of due process. In *Demore v. Kim*, the Supreme Court held that even where INA § 236(c) applies, due process requires that the individual be afforded some opportunity to challenge whether they are properly included in the mandatory detention category. *Demore v. Hyung Joon Kim*, 538 U.S. 510, 514 n.3 (2003).

57. "[T]he Due Process Clause prohibits arbitrary deprivations of liberty, a lawful permanent resident alien such as respondent could be entitled to an individualized determination as to his risk of flight and dangerousness if the continued detention became unreasonable or unjustified." *Demore v. Hyung Joon Kim*, 538 U.S. 510, 532 (2003). *Demore* assumes that a noncitizen such as the Petitioner in this case would have at a minimum an individualized hearing were the Government would have to show that he is a danger to the community and a flight risk and he would have the opportunity to challenge that charge. *Demore v. Hyung Joon Kim*, 538 U.S. 510 (2003) (citing to *Matter of Joseph*, 22 I. & N. Dec. 799 (BIA 1999). As the Southern District of Texas explained in *Garza-Garcia v. Moore*, even when DHS asserts that a respondent is subject to mandatory detention, the Immigration Judge retains authority to examine that claim in a *Matter of Joseph* hearing. *Garza-Garcia v. Moore*, 539 F. Supp. 2d 899, 906–07 (S.D. Tex. 2007). The court emphasized that denying access to a *Joseph* hearing based on DHS labeling someone as an "arriving alien" is "nonsensical," noting that

Demore v. Kim presumes the availability of a *Joseph* review whenever DHS seeks to impose 8 U.S.C. § 1226(c), INA § 236(c) detention. *Id.*

58. The Supreme Court has long recognized that habeas relief is appropriate when a person is unlawfully held without an adequate opportunity to be heard. See *Moore v. Dempsey*, 261 U.S. 86, 91 (1923); *Johnson v. Zerbst*, 304 U.S. 458, 465–66 (1938); *Burns v. Wilson*, 346 U.S. 137, 142–44 (1953). Here, Respondents have denied Petitioner a fair procedure and opportunity to be heard pursuant to a *Joseph* review, as well as given any legal justification for continued detention.

59. For these reasons, Respondents' continued detention of Petitioner without access to a bond hearing violates the Fifth Amendment and must be immediately remedied by this Court.

COUNT TWO
CONTINUED DUE PROCESS VIOLATION PURSUANT TO:
Statutory Interpretation —The Text, Structure, and Controlling Authority Confirm That Long-Term U.S. Residents Arrested in the Interior Are Detained Under 8 U.S.C. § 1226(a), not § 1225(b)

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

61. The Government's assertion that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b) is contrary to the statutory text, structure, longstanding regulatory practice, and binding Supreme Court precedent. Petitioner was arrested in the interior of the United States and came into ICE custody on or about October 7, 2025, after being arrested for an allegation of discharging a firearm—a third degree felony in Texas called Deadly Conduct—by the Madison County Sheriff; was never processed through expedited removal; and was never designated as an arriving alien. He was instead issued a Notice to Appear and placed directly into full removal proceedings under 8 U.S.C. § 1229a.

62. Under these facts, 8 U.S.C. § 1226(a) governs his detention. Section 8 U.S.C. § 1226(a) applies to noncitizens who, like Petitioner, are already present in the United States, have been arrested on a warrant, and are awaiting adjudication of their removal cases in Immigration Court. Section 8 U.S.C. § 1225(b), by contrast, applies only when an individual is seeking admission at the border or has been stopped immediately upon unlawful entry. The regulations make this distinction explicit. See 8 C.F.R. § 1.2 (defining "arriving alien"). Petitioner does not fall within that definition.

63. 8 U.S.C. § 1225(b)(2)(A) applies only to individuals who are "applicants for admission" as defined in 8 U.S.C. § 1225(a) (1), INA § 235(a)(1) that is, individuals who are arriving at the border, or who are encountered shortly after unlawful entry and processed through expedited removal. *See* 8 U.S.C. § 1225(b)(1)(A)(ii); 8 C.F.R. § 235.3(b)(1). Under 8 C.F.R. § 1001.1(q), an "arriving alien" is defined as someone "coming to a port-of-entry," or "seeking admission," but not an individual arrested inside the United States pursuant to a warrant, particularly when he has been in the United States for over 2 years as required to trigger mandatory detention under 8 U.S.C. § 1225(b)(1)(A)(iii)(II). The Board of Immigration Appeals has confirmed that the present-tense term "arriving" implies a temporal and geographic limitation tied to the border entry context, not to people who have resided in the United States for years. *See Matter of M-D-C-V-*, 28 I. & N. Dec. 18, 23 (BIA 2020). The Board of Immigration Appeals (BIA) is now changing its previous interpretation of 8 U.S.C. § 1225(b)(1)(A)(iii)(II) and applying it in a manner that is not supported by the text. The BIA does not have the power to legislate and proper respect for separation of powers requires that this Court give no deference to *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

64. The Supreme Court has repeatedly confirmed this statutory structure. In *Jennings v. Rodriguez*, 583 U.S. 281, 302–03 (2018), the Court held that detention under 8 U.S.C. § 1226 applies to individuals "already present in the United States" and that custody under 8 U.S.C. § 1226 occurs only when the person is arrested "on a warrant issued by the Attorney General."

65. The Government's reading would collapse the distinction between 8 U.S.C. §§ 1225 and 1226 and would render 8 U.S.C. § 1226(c)(1)(E)—added by Congress in 2025 as part of the Laken Riley Act—superfluous. Congress created 8 U.S.C. § 1226(c)(1)(E) to add a new criminal-conduct requirement for mandatory detention of certain noncitizens present without admission. If every person who ever entered without inspection were automatically subject to 8 U.S.C. § 1225(b)(2)(A), Congress would have had no reason to enact § 1226(c)(1)(E). Courts have rejected this exact argument. See *Sampiao v. Hyde*, 2025 U.S. Dist. LEXIS 175513, at *22–23 (D. Mass. 2025) ("Interpreting Section 1225(b)(2) to apply to noncitizens arrested in the interior would render Section 8 U.S.C. § 1226(c)(1)(E)'s criminal conduct criterion superfluous.").

66. Because Petitioner has no criminal convictions, and only one pending criminal charge allegation, Respondents and DHS cannot rely on 8 U.S.C. § 1226(c) mandatory detention. Nor can they rely on *Matter of Joseph*, because the Government cannot show Petitioner is "properly included" in 8 U.S.C. § 1226(c). Thus, the only applicable provision is 8 U.S.C. § 1226(a).

67. Federal courts across each district in Texas have uniformly rejected the Government's interpretation of 8 U.S.C. § 1225(b)(2)(A) when applied to long-term residents apprehended in the interior. See *Buenrostro-Mendez v. Bondi*, No. H-25-3726, 2025 U.S.

Dist. LEXIS 201967 (S.D. Tex. 2025) (rejecting *Yajure Hurtado* as inconsistent with statutory text, structure, legislative history, and decades of agency practice); *Carlos v. Bondi*, No. 9:25-CV-00249-MJT-ZJH, 2025 U.S. Dist. LEXIS 229093 (E.D. Tex. 2025) (holding that interior arrests fall under § 1226(a)); *Parada-Hernandez v. Johnson*, No. 3:25-cv-2729-K-BN, 2025 U.S. Dist. LEXIS 249952 (N.D. Tex. 2025) (magistrate judge recommending habeas relief because § 1226(a), not § 1225(b)(2), governs detention of long-term residents), report and recommendation adopted, *Parada-Hernandez v. Johnson*, No. 3:25-cv-2729-K-BN, 2025 U.S. Dist. LEXIS 234517 (N.D. Tex. 2025) (district judge adopting findings in full). Additional Texas courts agree. See *Lopez-Arevelo v. Bondi*, No. 4:25-cv-1999, 2025 WL 2691828 (S.D. Tex. Sept. 30, 2025); *Covarrubias v. Vergara*, No. 5:25-CV-112, 2025 U.S. Dist. LEXIS 206523 (S.D. Tex. 2025); *Cortina v. De Anda-Ybarra*, No. EP-25-CV-00523-DB, 2025 U.S. Dist. LEXIS 226367 (W.D. Tex. 2025).

68. These decisions[10] consistently hold that:

a) 8 U.S.C. § 1225(b) does not apply to noncitizens arrested in the interior,

b) detention of long-term residents is governed by 8 U.S.C. § 1226(a), and

c) Immigration Judges retain authority to set bond.

[10] See *Buenrostro-Mendez v. Bondi*, No. H-25-3726, 2025 U.S. Dist. LEXIS 201967 (S.D. Tex. 2025) (rejecting *Yajure Hurtado* as inconsistent with statutory text, structure, legislative history, and decades of agency practice); *Carlos v. Bondi*, No. 9:25-CV-00249-MJT-ZJH, 2025 U.S. Dist. LEXIS 229093 (E.D. Tex. 2025) (holding that interior arrests fall under § 1226(a)); *Parada-Hernandez v. Johnson*, No. 3:25-cv-2729-K-BN, 2025 U.S. Dist. LEXIS 249952 (N.D. Tex. 2025) (magistrate judge recommending habeas relief because § 1226(a), not § 1225(b)(2), governs detention of long-term residents), report and recommendation adopted, *Parada-Hernandez v. Johnson*, No. 3:25-cv-2729-K-BN, 2025 U.S. Dist. LEXIS 234517 (N.D. Tex. 2025) (district judge adopting findings in full). Additional Texas courts agree. See *Lopez-Arevelo v. Bondi*, No. 4:25-cv-1999, 2025 WL 2691828 (S.D. Tex. Sept. 30, 2025); *Covarrubias v. Vergara*, No. 5:25-CV-112, 2025 U.S. Dist. LEXIS 206523 (S.D. Tex. 2025); *Cortina v. De Anda-Ybarra*, No. EP-25-CV-00523-DB, 2025 U.S. Dist. LEXIS 226367 (W.D. Tex. 2025).

69. The BIA's contrary view in *Matter of Yajure Hurtado* is not entitled to deference after *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024). Courts must interpret the statute independently, and the overwhelming weight of federal authority, including within Texas, has rejected Yajure's interpretation as inconsistent with statutory text and structure.

70. Because Petitioner is properly detained under 8 U.S.C. § 1226(a), the Government's refusal to provide a bond hearing violates federal law. Petitioner therefore respectfully requests that this Court order his immediate release, or, alternatively, require the Government to provide a prompt and meaningful bond hearing before an Immigration Judge.

COUNT THREE
ADMINISTRATIVE PROCEDURE ACT

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

72. Respondents' decision to categorically deny Petitioner any opportunity to seek bond redetermination violates the Immigration and Nationality Act, the Administrative Procedure Act (APA), and the United States Constitution.

73. Federal statutes and regulations provide a procedure for noncitizens in removal proceedings who are detained under 8 U.S.C. § 1226(a) to request a custody redetermination before an Immigration Judge. See 8 U.S.C. § 1226(a); 8 C.F.R. §§ 1236.1(d), 1003.19(a).

74. By refusing to provide Petitioner any bond hearing and denying jurisdiction to consider his custody request, Respondents have unlawfully withheld and unreasonably delayed agency action required by law, in violation of 5 U.S.C. § 706(1).

75. Respondents' actions are also arbitrary, capricious, and contrary to law because they apply an incorrect and ultra vires interpretation of 8 U.S.C. § 1225(b), without statutory authority, and in direct conflict with § 1226(a). See 5 U.S.C. § 706(2)(A), (C).

76. Respondents' interpretation would improperly alter long-standing detention rules and eliminate access to custody review for thousands of noncitizens apprehended in the interior of the United States, despite decades of administrative practice and binding regulations confirming bond eligibility under § 1226(a). Such a fundamental change cannot be implemented absent notice-and-comment rulemaking, which has not occurred. See 5 U.S.C. § 553.

77. Respondents' procedural bars to bond review also operate to deny Petitioner the ability to meaningfully defend against removal while on release. Continued detention prevents him from returning to his family, maintaining employment, and gathering evidence required to pursue relief such as cancellation of removal. These burdens constitute a deprivation of liberty without adequate process and further demonstrate the unlawfulness of Respondents' position.

78. Because Respondents are acting contrary to constitutional right, statutory authority, and established regulatory procedure, this Court may and should set aside the unlawful custody determination under the APA. See 5 U.S.C. § 706(2)(B).

79. Petitioner therefore respectfully requests that this Court declare Respondents' denial of custody redetermination unlawful, and order that Petitioner receive either immediate release or a prompt and meaningful bond hearing before an Immigration Judge.

COUNT FOUR
VIOLATION OF THE INA: REQUEST FOR RELIEF PURSUANT TO MALDONADO BAUTISTA

80. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs 1-70 as if fully set forth herein.

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

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

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

84. Petitioner is a member of the Bond Eligible Class, as he:

a) does not have lawful status in the United States and is currently detained at the Joe Corley Processing Center, Detention Facility. He was apprehended by immigration authorities on October 7, 2025.

b) entered the United States without inspection over twenty-two years ago and was not apprehended upon arrival; and

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

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

86. After Petitioner was apprehended on or about October 6, 2025, he was taken into custody by ICE. Petitioner was taken into custody by ICE after being arrested for an allegation of discharging a firearm—a third degree felony in Texas called Deadly Conduct—by the Madison County Sheriff. DHS placed him in removal proceedings pursuant to 8 U.S.C. § 1229a., and has charged Petitioner as being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i), as someone who entered the United States without inspection and, 8 U.S.C. § 1182(a)(7)(A)(i)(I) as someone who at the time of application for admission was not in possession of an immigrant visa.

87. The Court should expeditiously grant this petition.

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

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

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

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

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

PRAYER FOR RELIEF

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

a. Assume jurisdiction over this matter;

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

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

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

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

Respectfully submitted,

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

I represent Petitioner, Fernando Garcia Tobon, 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.

Executed on 12/19/2025

By: /s/ Roberto M. Hinojosa
Roberto M. Hinojosa
Attorney for Petitioner