UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

RAKHMONALI ABDIVAITULU (A[redacted] Petitioner, v. KRISTI NOEM, Secretary, U.S. Department of Homeland Security; MIGUEL VERGARA, Field Office Director, Harlingen Field Office, Immigration and Customs Enforcement; Warden, Port Isabel Service Detention Center. Respondents.	)	Case No. 1:25-cv-357

PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR EMERGENCY INJUNCTIVE RELIEF

The Petitioner, RAKHMONALI ABDIVAITULU, by and through his own and proper person and through his attorney, KHIABETT OSUNA and ANDREA OCHOA, of the LAW OFFICES OF KRIEZELMAN BURTON & ASSOCIATES, LLC, hereby petition this Honorable Court to issue a Writ of Habeas Corpus to review his unlawful detention during his pending removal proceedings, in violation of his constitutional and statutory rights.

Introduction

1. Petitioner is presently being detained by U.S. Immigration and Customs Enforcement ("ICE") at Port Isabel Service Detention Center located in Los Fresnos, Texas.
2. Petitioner entered the United States after making an appointment through the Department of Homeland Security ("DHS")'s CBPOne application on or about March 2023.
3. Petitioner has never been arrested or convicted of any crime. Petitioner's detention is a substantial deprivation and burden that puts Petitioner and his family at risk.

4. Petitioner worked as a truck driver and was arrested at a weigh station in Indiana.

5. Petitioner's detention became unlawful on September 18, 2025, when he was detained by Immigration and Customs Enforcement (ICE). His continued detention is an unlawful violation of due process and incorrect interpretation of immigration law.

6. Petitioner respectfully asks this Court to issue a temporary restraining order directing Petitioner's release and enjoin Respondents' continued detention of Petitioner.

7. In the alternative, Petitioner respectfully requests the Court order Respondents to show cause why this Petition should not be granted within three days. *See* 28 U.S.C. § 2243.

Jurisdiction and Venue

8. The action arises under the Constitution of the United States, the Immigration and Nationality Act of 1952, as amended ("INA"), 8 U.S.C. § 1101 *et seq*., and the Administrative Procedure Act ("APA"), 5 U.S.C. § 701 *et seq*.

9. This Court has habeas corpus jurisdiction pursuant to 28 U.S.C. § 2241, and Article I, section 9, clause 2 of the United States Constitution (the "Suspension Clause"), as Petitioner is presently subject to immediate detention and custody under color of authority of the United States government, and said custody is in violation of the Constitution, law or treaties of the United States.

10. This action is brought to compel the Respondents, officers of the United States, to accord Petitioner the due process of law to which he is entitled under the Fifth and Fourteenth Amendments of the United States Constitution.

11. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgments Act, 28 U.S.C. § 2201 *et seq*., 28 U.S.C. § 1331 (federal question jurisdiction), 28 U.S.C. § 1361 (mandamus), and the All Writs Act, 28 USC § 1651.

12. Venue is proper in the Southern District of Texas because Petitioner is presently detained by Respondents at Port Isabel Service Detention Center located in Los Fresnos, Texas – which is located within the Southern District of Texas. 28 U.S.C. § 1391(b), (e)(1).

Parties

13. Petitioner RAKHMONALI ABDIVAITULU is a native of Kyrgyzstan and citizen of Russia. Petitioner is presently detained at Port Isabel Service Detention Center located in Los Fresnos, Texas.

14. Respondent KRISTI NOEM is being sued in her official capacity only. Pursuant to the Homeland Security Act of 2002, Pub. L. 107-296, Defendant NOEM, through her delegates, has broad authority over the operation and enforcement of the immigration laws.

15. Respondent MIGUEL VERGARA is being sued in his official capacity only, as the Field Office Director of the Harlingen Field Office of ICE. As such, he is charged with the detention and removal of aliens which fall under the jurisdiction of the Harlingen Field Office and is considered Petitioner's immediate custodian.

16. Respondent Warden of the Port Isabel Service Detention Center is being sued in his/her official capacity only. As the Jailer of the Port Isabel Service Detention Center he is the custodian of the jail and all individuals detained therein, where Petitioner is presently being detained. He/she is, therefore, Petitioner's immediate custodian.

Custody

17. Petitioner RAKHMONALI ABDIVAITULU is being unlawfully detained by ICE and he is not likely to be removed in the reasonably foreseeable future.

Factual and Procedural Background

18. Petitioner RAKHMONALI ABDIVAITULU is a native of Kyrgyzstan and citizen of Russia.

19. In 2023, Petitioner made an appointment through the United States Department of Homeland Security ("DHS")'s mobile application "CBPOne" to orderly obtain an appointment to enter the United States.

20. Petitioner entered the United States on or about March 2023.

21. DHS appears to have paroled Petitioner into the country and classified his entry as "DT".[1] Upon release, Petitioner was also served with a Notice to Appear.

22. DHS initiated full removal proceedings, and not expedited removal proceedings, against Respondent when they filed the Notice to Appear with the Department of Justice's Executive Office for Immigration Review.

23. On or around that date, DHS issued Petitioner a Form, I-862, Notice to Appear ("NTA") charging him with inadmissibility pursuant to § 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (INA) for being "an immigrant not in possession of [valid immigration and travel documents]."

24. Shortly after entry, and prior to his one-year deadline, Petitioner timely filed his asylum application.

25. Since Petitioner's detention in September of 2025, he has not seen a Judge. Indeed, Petitioner's next court date is still showing up on the non-detained docket, with a final

[1] *See* United States Citizenship and Immigration Services Guidance Website, https://www.uscis.gov/save/current-user-agencies/guidance/faqs-on-the-effect-of-changes-to-parole-and-temporary-protected-status-tps-for-save-agencies (under "Non-Categorical Parole" heading, select "What does 'Non-Categorical Parole' mean?") ("Aliens who are outside of the United States may request to be paroled into the United States based on urgent humanitarian reasons or a significant public benefit. These aliens are not paroled into the United States under a categorical parole program or process. Often, the Class of Admission (COA) for these aliens is 'DT' though other parole related COAs may have been used.").

individual hearing on January 19, 2028, at the Philadelphia Immigration Court. *See* Exhibit A.

26. Petitioner has never been arrested or convicted of any crime.

27. Petitioner was recently detained by ICE/ERO while stopped at a weigh station in Indiana, in the course of his job as a truck driver.

28. Petitioner did not receive any termination letter of his parole status.

29. Petitioner has a valid employment authorization document that he used to obtain a Commercial Driver's License and lawfully work in the United States.

30. On September 5, 2025, the Board of Immigration Appeals ("BIA") issued the decision, *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). This decision, for the first time in immigration history, proclaimed that any person who crossed the border unlawfully and is later taken into immigration detention is no longer eligible for release on bond.

31. Before September 5, 2025, just 3 months prior, the official position of the BIA was that the Immigration Judge had power to grant release on bond under INA section 236(a) if the person did not have a disqualifying criminal record and the judge was satisfied, after a hearing, that the person was not a danger to the community or a flight risk. *Matter of Akhmedov*, 29 I&N Dec. 166 (BIA 2025).

32. Moreover, ICE had a longstanding practice of treating noncitizens taken into custody while living in the United States as detained pursuant to 8 U.S.C. section 1226(a). *Rocha Rosado v. Figueroa*, 2025 WL 2337099, (D. Arizona August 11, 2025); *see Loper Bright Enter. v. Raimondo*, 603 U.S. 369, 386 (2024) ("[T]he longstanding practice of the government—like any other interpretive aid—can inform [a court's]

determination of what the law is."). However, this position changed on July 8, 2025, when internal "interim guidance" was released regarding a change in their longstanding interpretation of which noncitizens are eligible for release on bond. ICE's position is that only those already admitted to the U.S. are eligible to be released from custody during their removal proceedings, and that all others are subject to mandatory detention under 8 U.S.C. § 1225, instead of 8 U.S.C. § 1226, and will remain detained with only extremely limited parole options at ICE's discretion.

33. Petitioner's continued detention, with Immigration Judge's ruling nationwide that they do not have jurisdiction over bond hearings for individuals, like Petitioner, separates his from his family, prohibits his from being able to financially provide for his,, and inhibits his removal defense in many ways, including by making it difficult to communicate with witnesses, gathering evidence, and afford legal representation, among other related harm.

34. Since the September 5, 2025 BIA decision, Respondents have increased their enforcement efforts and have detained primarily individuals in the construction industry, including Petitioner, without providing them an opportunity to challenge their detention. As a result, Petitioner is now detained away from his family, counsel, and support system and continues to be subjected to the aforementioned harms.

35. Because Petitioner's removal proceedings have already been initiated and his case is in still before an immigration judge on the non-detained docket, there is little likelihood that Petitioner's removal will occur in the reasonably foreseeable future.

Legal Framework

Due Process Clause

36. "It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings." *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). "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 v. Davis*, 533 U.S. 678, 690 (2001).

37. In the immigration context, the Supreme Court only recognizes two purposes for civil detention: preventing flight and mitigating the risks of danger to the community. *Zadvydas*, 533 U.S. at 690; *Demore*, 538 U.S. at 528. A noncitizen may only be detained based on these two justifications if they are otherwise statutorily eligible for bond. *Zadvydas*, 533 U.S. at 690.

38. "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). In this case, to determine the due process to be afforded to Petitioner, the Court should consider (1) the private interest affected by the government action; (2) the risk that current procedures will cause an erroneous deprivation of that private interest, and the extent to which that risk could be reduced by additional safeguards; and (3) the government's interest in maintaining the current procedures, including the

governmental function involved and the fiscal and administrative burdens that the substitute procedural requirement would entail. *Id.* at 335.

Humanitarian Parole and Recent Detention

39. As a threshold matter, the specific issues related to humanitarian parole and detention, have recently been reached by courts in other circuits, including the Sixth Circuit. *See Patel v. Tindall*, 2025 WL 2823607 *at 6 (W.D. Ky. Oct 3, 2025) (finding that "an individual who has been paroled without first having been placed in expedited removal cannot later be designated for expedited removal."); *Perez Guerra. v. Woosley*, 2025 WL 3046187 (W.D. Ky. Oct 31, 2025); *Rodriguez Martinez v. Raycraft et al.*, 2025 WL 3511093 (W.D. Mich. Dec. 8, 2025); *Y-Z-L-H v. Bostock*, 792 F. Supp. 3d 1123 (D. Or. 2025); *Mata Velasquez v. Kurzdorfer*, 794 F. Supp. 3d 128, 146 (W.D.N.Y. 2025) (citations omitted) (addressing this issue, and granting the petitioner's motion for preliminary injunction and ordering that the petitioner be released); *see, e.g., Y-Z-L-H*, 792 F. Supp. 3d at 1137–47 (addressing this issue, and granting the petitioner's habeas petition and ordering that the petitioner be released from custody); *Loaiza Arias*, 2025 WL 3295385, at *2–4 (same); *Noori v. LaRose*, No. 25-cv-1824-GPC-MSB, 2025 WL 2800149, at *10–13 (S.D. Cal. Oct. 1, 2025) (same); *Munoz Materano v. Arteta*, No. 25 CIV. 6137 (ER), --- F. Supp. 3d ----, 2025 WL 2630826, at *14–17 (S.D.N.Y. Sept. 12, 2025) (same); *Gabriel B.M. v. Bondi*, No. 25-cv-4298 (KMM/EMB), 2025 WL 3443584, at *6–7 (D. Minn. Dec. 1, 2025) (addressing this issue, and granting the petitioner's request for a preliminary injunction and ordering the petitioner's release from custody); *Orellana v. Francis*,

No. 25-cv-04212 (OEM), 2025 WL 2822640, at *2–3 (E.D.N.Y. Oct. 3, 2025) (addressing the issue in the context of a motion for reconsideration filed by the respondents, and affirming the court's grant of habeas relief to the petitioner and the court's order to release the petitioner).

40. The Immigration and Nationality Act "establishes the framework governing noncitizens' entry into and removal from the United States, with regulations promulgated by the enforcing agencies providing further governance." *Y-Z-L-H v. Bostock*, 792 F. Supp. At 1123.

41. The statute and applicable regulations set out specific mandatory guidelines that dictate how the government can place a person into expedited removal proceedings, under 8 U.S.C. § 1225(b)(1), or into regular removal proceedings under 8 U.S.C. § 1229(a), upon arriving at a port of entry. Indeed, "noncitizens who arrive at a port of entry without a visa or other entry document, like Petitioner, are deemed 'inadmissible' under 8 U.S.C. § 1182(a)(7)" due to their lack of entry documents. *Id.* at 1132 & n.7 (noting that "[d]epending on the circumstances, other categories of inadmissibility may also apply, but § 1182(a)(7) applies for noncitizens without proper documentation").

42. Once a noncitizen is deemed inadmissible, "the immigration officer must order the noncitizen's removal unless the noncitizen indicates an intention to apply for asylum or fear of prosecution." *Id.* (citing 8 U.S.C. § 1225(b)(1)(A)(i)).

43. Further, section 1225(b)(2)(A) provides that "in the case of an alien who is an applicant for admission, if 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 for a proceeding under section 1229a of this title." 8 U.S.C. § 1225(b)(2)(A). However, "applicants for admission may be temporarily released on parole [into the United States] 'for urgent humanitarian reasons or significant public benefit,'" as set forth in 8 U.S.C. § 1182(d)(5)(A). *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018) (quoting 8 U.S.C. § 1182(d)(5)(A)). The decision to grant parole pursuant to 8 U.S.C. § 1182(d)(5)(A) is determined "on a case-by-case basis." 8 U.S.C. § 1182(d)(5)(A).

44. Then, "when the purpose of the parole has been served," section 1182(d)(5)(A) provides that "the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States." *Jennings*, 583 U.S. at 288 (quoting 8 U.S.C. § 1182(d)(5)(A)).

45. The process to terminate a previously granted parole is also captured in the regulations and applicable statutes. Pursuant to 8 C.F.R. § 212.5(e)(2)(i), which governs the "[t]ermination of parole,"

> In cases not covered by paragraph (e)(1) of this section, upon accomplishment of the purpose for which parole was authorized or when in the opinion of one of the officials listed in paragraph (a) of this section, neither humanitarian reasons nor public benefit warrants the continued presence of the alien in the United States, parole shall be terminated upon written notice to the alien and he or she shall be restored to the status that he or she had at the time of parole.

8 C.F.R. § 212.5(e)(2)(i). In other words, parole can only be terminated if the purpose of parole is either accomplished, or humanitarian reasons and the public benefit no longer warrant parole." *Rodriguez Martinez v. Raycraft et al.*, 1:25-cv-1504 at 8 (W.D. Mich. Dec. 8, 2025) (citing *Loaiza Arias v. LaRose*, No.

3:25-cv-02595-BTM-MMP, 2025 WL 3295385, at *3 (S.D. Cal. Nov. 25, 2025) (citing 8 C.F.R. § 212.5(e))).

46. Respondents have failed to follow the applicable statutory and regulatory framework necessary to terminate Petitioner's parole. To start, the purpose of the Petitioner's parole has not been accomplished. He fled in 2023 from Russia due to persecution he faced due to his national origin and ethnicity as a Kyrgyzstan man. He followed the rules at the time of his entry; he waited for an appointment through CBPOne, before presenting himself at a port of entry. At that time, Petitioner was granted parole pursuant to 8 U.S.C. § 1182(d)(5)(A), which provides for parole into the United States "for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A). In 2024, Petitioner filed an Application for Asylum and Withholding of Removal, with the Immigration Court, which remains pending and unadjudicated. As a result, when Petitioner was recently arrested and detained, Petitioner was still seeking asylum. And even more concerning, Respondents did not provide any notice or explanation about Petitioner's parole revocation and the circumstances at play do not indicate that the humanitarian reason or public benefit that provided justification for Petitioner to be paroled into the country no longer exists or applies. They summarily decided to detain him and he has been detained for three months without an opportunity to see a judge.

47. Several district courts nationwide have further explained that similar to how grant of parole requires an individualized review, revocation of parole also requires a case-by-case assessment to comply with the statute. *See Mata Velasquez*, 794 F. Supp. 3d at 146; *Y-Z-L-H*, 792 F. Supp. 3d at 1137–47; *Loaiza Arias*, 2025 WL 3295385, at

*2–4; *Noori*, 2025 WL 2800149, at *10–13; *Munoz Materano*, No. 25 CIV. 6137 (ER), --- F. Supp. 3d ----, 2025 WL 2630826, at *14–17; *Gabriel B.M.*, No. 25-cv-4298 (KMM/EMB), 2025 WL 3443584, at *6–7; *Orellana v. Francis*, No. 25-cv-04212 (OEM), 2025 WL 2822640, at *2–3.

48. Respondents did not present any evidence to Petitioner when he was detained regarding their case-by-case determination regarding the specific revocation of his parole. Indeed, Petitioner appears to have been a collateral arrest as part of *Operation Midway Blitz* that targeted those driving trucks, and stopping them at weigh station, without any case-by-case determination.

49. Respondents failed to follow the requirements under the law to revoke Petitioner's parole and as such they lacked the authority to arrest and detain him, unless there was another reason to arrest him. *See Mata Velasquez*, 794 F. Supp. 3d at 145; *cf. Norfolk S. Ry. Co. v. U.S. Dep't of Lab.*, No. 21-3369, 2022 WL 17369438, at *6 (6th Cir. Dec. 2, 2022) (discussing that "an agency's action that fails to observe the procedures required by its own regulations should be set aside" (citation omitted)); *Wilson v. Comm'r of Soc. Sec.*, 378 F.3d 541, 545 (6th Cir. 2004) ("It is an elemental principle of administrative law that agencies are bound to follow their own regulations[,] . . . [and] '[a]n agency's failure to follow its own regulations tends to cause unjust discrimination and deny adequate notice and consequently may result in a violation of an individual's constitutional right to due process.'" (additional internal quotation marks omitted) (quoting *Sameena, Inc. v. U.S. Air Force*, 147 F.3d 1148, 1153 (9th Cir. 1998))). Respondents had no other reason to arrest and detain Petitioner than his status as a noncitizen.

50. Petitioner has never been arrested or convicted of any crime.

51. Alternatively, even assuming, *arguendo*, that Respondents argue any noncitizen, regardless of whether they are already present and residing in the United States, is "an alien seeking admission" subject to mandatory detention under § 1225, several courts in this District, and over 40 in the Fifth Circuit, have rejected this argument.[2]

52. In *Jennings v. Rodriguez*, the Supreme Court analyzed 8 U.S.C. section 1225 and 8 U.S.C. 1226. 583 U.S. at 287. The Court held that section 1225(b) "applies primarily

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[2] *Rincon Chavero v. Bondi*, No. EP-25-CV-00638-DB, 2025 WL 3679768 (W.D. Tex. Dec. 18, 2025); *Abdelalim-Elmetaher v. Thompson*, Respondents, No. SA-25-CA-01608-XR, 2025 WL 3654267 (W.D. Tex. Dec. 16, 2025); *Leiva Garcia v. Noem*, No. EP-25-CV-00624-DB, 2025 WL 3645179 (W.D. Tex. Dec. 16, 2025); *Madrazo Rodriguez v. Noem*, No. SA-25-CA-01657-XR, 2025 WL 3654332 (W.D. Tex. Dec. 16, 2025); *Rodriguez Lara v. Bondi*, No. SA-25-CA-01581-XR, 2025 WL 3654263 (W.D. Tex. Dec. 16, 2025); *Vasquez Chinchilla v. De Anda-Ybarra*, No. EP-25-CV-00548-DB, 2025 WL 3645178 (W.D. Tex. Dec. 16, 2025); *Diaz Perez v. Thompson*, No. 5:25-CV-1664-JKP, 2025 WL 3654333 (W.D. Tex. Dec. 15, 2025); *Acosta de Perez v. Frink*, No. CV H-25-5357, 2025 WL 3626347 (S.D. Tex. Dec. 12, 2025); *Cruz Mendoza v. Warden, Dilley Immigration Processing Center*, No. 5:25-CV-1649-JKP, 2025 WL 3654269 (W.D. Tex. Dec. 12, 2025); *Estupinan Reyes v. Thompson*, No. SA-25-CA-01590-XR, 2025 WL 3654265 (W.D. Tex. Dec. 12, 2025); *Lopez-Neria v. Bondi*, No. 5:25-CV-1650-JKP, 2025 WL 3654329 (W.D. Tex. Dec. 12, 2025); *Murillo-Rodriguez v. Bondi*, No. 5:25-CV-1684-JKP, 2025 WL 3654335 (W.D. Tex. Dec. 12, 2025); *Acosta-Balderas v. Bondi*, No. 5:25-CV-1629-JKP, 2025 WL 3654331 (W.D. Tex. Dec. 11, 2025); *Davila Mercado v. Lyons*, No. 5:25-CV-1623-JKP, 2025 WL 3654268 (W.D. Tex. Dec. 11, 2025); *Espinoza Andres v. Noem*, No. CV H-25-5128, 2025 WL 3458893 (S.D. Tex. Dec. 2, 2025); *Tinoco Pineda v. Noem*, No. SA-25-CA-01518-XR, 2025 WL 3471418 (W.D. Tex. Dec. 2, 2025); *Galmadez Martinez v. Noem*, No. SA-25-CV-01373-JKP, 2025 WL 3471575 (W.D. Tex. Nov. 26, 2025); *Granados v. Noem*, No. SA-25-CA-01464-XR, 2025 WL 3296314 (W.D. Tex. Nov. 26, 2025); *Morales Aguilar v. Bondi*, No. 5:25-CV-01453-JKP, 2025 WL 3471417 (W.D. Tex. Nov. 26, 2025); *Coulibaly v. Thompson*, No. 5:25-CV-1539-JKP, 2025 WL 3471573 (W.D. Tex. Nov. 25, 2025); *Guzman Tovar v. Noem*, No. 5:25-CV-1509-JKP, 2025 WL 3471416 (W.D. Tex. Nov. 25, 2025); *Aguinaga Trujillo v. Noem*, No. 5:25-CV-1266-JKP, 2025 WL 3471572 (W.D. Tex. Nov. 24, 2025); *Martinez Orellana v. Noem*, No. 5:25-CV-1028-JKP, 2025 WL 3471569 (W.D. Tex. Nov. 24, 2025); *Miralrio Gonzalez v. Ortega*, No. 5:25-CV-1156-JKP, 2025 WL 3471571 (W.D. Tex. Nov. 24, 2025); *Vasquez Chinchilla v. De Anda-Ybarra*, No. EP-25-CV-00548-DB, 2025 WL 3268459 (W.D. Tex. Nov. 24, 2025); *Penuela Carlos v. Bondi*, No. 9:25-CV-00249-MJT-ZJH, 2025 WL 3252561 (E.D. Tex. Nov. 21, 2025); *Cruz Zafra v. Noem*, No. EP-25-CV-00541-DB, 2025 WL 3239526 (W.D. Tex. Nov. 20, 2025); *Orellana Cantarero v. Bondi*, No. 9:25-CV-00250-MJT-ZJH, 2025 WL 3252402 (E.D. Tex. Nov. 20, 2025); *Leon Hernandez v. Bondi*, No. 25-CV-1384 SEC P, 2025 WL 3217037 (W.D. La. Nov. 18, 2025); *Rodriguez Cortina v. Anda-Ybarra*, No. EP-25-CV-00523-DB, 2025 WL 3218682 (W.D. Tex. Nov. 18, 2025); *Cruz Gutierrez v. Thompson*, No. 4:25-4695, 2025 WL 3187521 (S.D. Tex. Nov. 14, 2025); *Trejo v. Warden of ERO El Paso E. Montana*, No. EP-25-CV-401-KC, 2025 WL 2992187 (W.D. Tex. Oct. 24, 2025); *Martinez v. Trump*, No. CV 25-1445 SEC P, 2025 WL 3124847 (W.D. La. Oct. 22, 2025); *Hernandez-Fernandez v. Lyons*, No. 5:25-CV-00773-JKP, 2025 WL 2976923 (W.D. Tex. Oct. 21, 2025); *Vieira v. De Anda-Ybarra*, No. EP-25-CV-00432-DB, 2025 WL 2937880 (W.D. Tex. Oct. 16, 2025); *Covarrubias v. Vergara*, No. 5:25-CV-112, 2025 WL 2950097 (S.D. Tex. Oct. 8, 2025); *Buenrostro-Mendez v. Bondi*, No. CV H-25-3726, 2025 WL 2886346 (S.D. Tex. Oct. 7, 2025); *Santiago v. Noem*, No. EP-25-CV-361-KC, 2025 WL 2792588 (W.D. Tex. Oct. 2, 2025); *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Lopez Santos v. Noem*, No. 3:25-CV-01193, 2025 WL 2642278 (W.D. La. Sept. 11, 2025); *Martinez v. Noem*, No. 5:25-CV-01007-JKP, 2025 WL 2598379 (W.D. Tex. Sept. 8, 2025); *Kostak v. Trump*, No. CV 3:25-1093, 2025 WL 2472136 (W.D. La. Aug. 27, 2025).

to aliens seeking entry into the United States." *Id.* at 297. Then, the Court noted that section 1226 "applies to aliens already present in the United States." *Id.* at 303.

53. The Court specifically found that "Section 1226(a) creates a default rule for those aliens by permitting- but not requiring- the Attorney General to issue warrants for their arrest and detention pending removal proceedings. Section 1226(a) also permits the Attorney General to release those aliens on bond, 'except as provided in subsection (c) of this section.'" (subsection pertains to aliens who fall into categories involving criminal offenses or terrorist activities). *Id.* at 303. "Federal regulations provide that alien detained under § 1226(a) receive bond hearings at the outset of detention." *Id.* at 306; 8 C.F.R. § 236.1(d)(1), 1236.1(d)(1).

54. The Supreme Court's analysis in *Jennings* demonstrates the difference between detention of arriving aliens who *are seeking* entry into the United States under section 1225 and the detention of those who are already present in the United States under section 1226.

55. A key phrase in § 1225 states that "[I]n the case of an alien who is an applicant for admission, if 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 for a proceeding under section 1229a[.]" 8 U.S.C. § 1225(b)(2)(A) (emphasis added). In other words, mandatory detention applies when "the individual is: (1) an 'applicant for admission'; (2) 'seeking admission'; and (3) 'not clearly and beyond a doubt entitled to be admitted.'" *Martinez*, 2025 WL 2084238, at *2.

56. The "seeking admission" language, "necessarily implies some sort of present tense action." *Martinez*, 2025 WL 2084238, at *6; *see also Matter of M- D-C-V-*, 28 I&N

Dec. 18, 23 (BIA 2020) ("The use of the present progressive tense 'arriving,' rather than the past tense 'arrived,' implies some temporal or geographic limit . . . ."); *U.S. v. Wilson*, 503 U.S. 329, 333 (1992) ("Congress' use of verb tense is significant in construing statutes.").

57. In other words, the plain language of § 1225 applies to immigrants currently seeking admission into the United States at the nation's border or another point of entry. It does not apply to noncitizens "already present in the United States"—only § 1226 applies in those cases. *See Jennings*, 583 U.S. at 303.

58. When interpreting a statute, "every clause and word . . . should have meaning." *United States ex rel. Polansky, M.D. v. Exec. Health Res., Inc.*, 599 U.S. 419, 432 (2023) (internal quotation marks and citation omitted). And "the words of the statute must be read in their context and with a view to their place in the overall statutory scheme." *Gundy v. United States*, 588 U.S. 128, 141 (2019) (quotation omitted).

59. This Court is not required, and should not, give deference to the recent *Matter of Yajure Hurtado* decision. In *Loper Bright*, the Supreme Court was clear that "[c]ourts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority," and indeed "may not defer to an agency interpretation of the law simply because a statute is ambiguous." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412 (2024). Rather, this Court can simply look to the Supreme Court's own words in *Jennings* that held that for decades, § 1225 has applied only to noncitizens "seeking admission into the country"—i.e., new arrivals at a port of entry, and that this contrasts with § 1226, which applies to noncitizens "already in the country." *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018).

Claims for Relief

FIRST CAUSE OF ACTION

Violation of the Due Process Clause of the Fifth Amendment
of the United States Constitution

60. Petitioner repeats and incorporates by reference all allegations above as though set forth fully herein.

61. The Due Process Clause asks whether the government's deprivation of a person's life, liberty, or property is justified by a sufficient purpose. Here, there is no question that the government has deprived Petitioner of his liberty by refusing his the opportunity to review the reasoning behind any termination of his parole status, or any avenue within the Immigration Court process to challenge that.

62. The government's detention of Petitioner is unjustified. Respondents have not demonstrated that Petitioner needs to be detained. *See Zadvydas*, 533 U.S. at 690 (finding immigration detention must further the twin goals of (1) ensuring the noncitizen's appearance during removal proceedings and (2) preventing danger to the community). He has never been arrested let alone convicted of any crime in the two years he has lived in the U.S. and contributed to his community. As a result, there is no credible argument that Petitioner cannot be safely released back to his community and family or that there have been material changes justifying his parole to be terminated.

63. The *Matter of Yajure Hurtado* decision wrongly interprets the Immigration and Nationality Act. While Petitioner's case is tangentially related to *Matter of Yajure Hurtado*, this Court is not required to give deference to the Board of Immigration Appeals. In *Loper Bright*, the Supreme Court was clear that "[c]ourts must exercise their independent judgment in deciding whether an agency has acted within its

statutory authority," and indeed "may not defer to an agency interpretation of the law simply because a statute is ambiguous." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412 (2024).

64. Rather, this Court can simply look to the Supreme Court's own words in *Jennings* that held that for decades, § 1225 has applied only to noncitizens "seeking admission into the country"—i.e., new arrivals at a port of entry, and that this contrasts with § 1226, which applies to noncitizens "already in the country." *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018). By keeping Petitioner detained today, his detention is unconstitutional as applied to his and in violation of his due process rights. Petitioner should have the opportunity to be released under Petitioner's § 1182(d)(5)(A) parole, subject to any conditions that existed prior to his detention.

65. Petitioner is "experiencing [many of] the deprivations of incarceration, including loss of contact with friends and family, loss of income earning, . . . lack of privacy, and, most fundamentally, the lack of freedom of movement." *See Günaydin*, 784 F. Supp. 3d at 1187.

66. For these reasons, Petitioner's detention violates the Due Process Clause of the Fifth Amendment.

SECOND CAUSE OF ACTION

Violation of the Immigration and Nationality Act

67. Petitioner repeats and incorporates by reference all allegations above as though fully set forth fully herein.

68. Petitioner has been detained and will not be afforded the opportunity to challenge any termination of his parole before the immigration court.

69. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As this Court held in *Patel v. Tindall*, "an individual who has been paroled without first having been placed in expedited removal cannot later be designated for expedited removal." 2025 WL 2823607 (W.D. Ky, Oct 3, 2025); *see also Perez Guerra. v. Woosley*, 2025 WL 3046187 (W. D. Ky. Oct 31, 2025); *Rodriguez Martinez v. Raycraft et al.*, 2025 WL 3511093 (W.D. Mich. Dec. 8, 2025). Petitioner was properly placed under full removal proceedings under section 1226.

70. The unlawful application of § 1225(b)(2) to Petitioner violates the INA.

Prayer for Relief

WHEREFORE, Petitioner respectfully request that this Honorable Court:

A. Accept jurisdiction over this action;

B. Order Respondents not to transfer Petitioner out of the jurisdiction of the Sixth Circuit during the pendency of these proceedings to preserve access to counsel;

C. Declare that Respondents' actions to detain Petitioner violate the Due Process Clause of the Fifth Amendment and violate the Immigration and Nationality Act;

D. Issue a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 and order the immediate release of Petitioner, subject to any conditions that existed under Petitioner's § 1182(d)(5)(A) parole;

E. Award reasonable attorneys' fees and costs for this action; and

F. Grant such further relief as the Court deems just and proper.

Dated: December 23, 2025

Respectfully Submitted,

/s/ Khiabett Osuna

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**Pro Hac Vice Motion Pending*