UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

BAYRON JOSE HERRERA-AVILA, Petitioner, v. KEVIN RAYCRAFT, in his official capacity as Acting Field Office Director of Enforcement and Removal Operations, Detroit Field Office, Immigration and Customs Enforcement; Kristi NOEM, in her official capacity as Secretary, U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; Pamela BONDI, in her official capacity as U.S. Attorney General; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, Respondents.	Case No. Hon. **PETITION FOR WRIT OF HABEAS CORPUS**

INTRODUCTION

1. This petition arises from the U.S. government's new policy—which contradicts both the plain language of the Immigration and Nationality Act (INA) and decades of agency practice—of erroneously interpreting the INA to mandate detention without the possibility of bond for noncitizens who entered the United States without inspection, even if they have been residing here for years.

2. This policy has led to the unlawful detention of countless noncitizens nationwide. Many habeas corpus petitions for their release have been filed in jurisdictions across the country (including dozens in the Eastern District of Michigan). Virtually every merits decision in those cases has found for the petitioners, either granting them a bond hearing or ordering their immediate release.

3. The recent decision in *Maldonado Bautista* recognizes this unlawful practice, yet Respondents continue to unlawfully detain and refuse bond eligibility to countless noncitizens nationwide.

4. Petitioner has been unlawfully detained without the possibility of bond in furtherance of this policy. He came to the United States seventeen years ago at 14 years old when he arrived. He has lived here ever since.

5. Petitioner was taken into immigration custody while on his way to work by immigration authorities. Petitioner has no criminal history and was not stopped for any crime. Respondents placed him in mandatory detention, alleging

that he had entered the United States without inspection. 8 U.S.C. § 1182(a)(6)(A)(i).

6. Petitioner is currently in the physical custody of Respondents at North Lake detention center, which falls under the purview of the Detroit Field Office of Immigration and Customs Enforcement (ICE), which has responsibility for immigration detention centers in Michigan and Ohio.

7. Under 8 U.S.C. § 1226(a), which allows for release on conditional parole or bond, Petitioners are entitled to a bond determination. That statute expressly applies to people who, like Petitioner, are residing in the United States but are charged as inadmissible for having initially entered the United States without inspection. In accordance with 8 U.S.C. § 1226(a), the Department of Homeland Security (DHS) and Executive Office of Immigration Review (EOIR) have for decades provided bond determinations and bond hearings to people like Petitioners who have been living in the United States but allegedly entered without inspection.

8. However, pursuant to a new governmental policy announced on July 8, 2025,[1] Petitioners are now being unlawfully detained without bond. The new policy instructs all ICE employees to no longer apply 8 U.S.C. § 1226(a) to people charged

[1] ICE Memo: Interim Guidance Regarding Detention Authority for Applicants for Admission (Jul. 8, 2025), https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission [https://perma.cc/8SP7-TDDD].

with being inadmissible under § 1182(a)(6)(A)(i)—i.e., those who initially entered the United States without inspection. Instead, under the new policy, ICE employees are to subject people like Petitioner to mandatory detention without bond under § 1225(b)(2)(A)—a provision that has historically been applied only to recent arrivals at the U.S. border—no matter how long they have resided in the United States.

9. Detaining Petitioners without bond is plainly contrary to the statutory framework of the INA and contrary to both agency regulations and decades of consistent agency practice applying § 1226(a) to people like Petitioner. It also violates their right to due process by depriving them of their liberty without any consideration of whether such a deprivation is warranted.

10. Accordingly, Petitioner seeks a writ of habeas corpus requiring that they be immediately released from custody unless Respondents provide them a bond hearing under § 1226(a) within seven days.

11. Petitioners are not challenging any discretionary denial of bond; they are challenging the legal determination that they are not eligible for bond under § 1226(a) in the first place.

JURISDICTION

12. This Court has jurisdiction under 28 U.S.C. § 2241(c) (habeas corpus); 28 U.S.C. § 1331 (federal question); and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

13. 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

14. Venue is proper in the Eastern District of Michigan under 28 U.S.C. § 2241 and 28 U.S.C. § 1391. Petitioners are detained in immigration detention facilities in Michigan and Ohio at the direction of, and are in the immediate custody of, Respondent Kevin Raycraft. *See Roman v. Ashcroft*, 340 F.3d 314, 320–21 (6th Cir. 2003).

15. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims and relevant facts occurred in the Eastern District.

REQUIREMENTS OF 28 U.S.C. § 2243

16. The Court must grant the petition for a writ of habeas corpus or order Respondents to show cause "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

17. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

PARTIES

18. Petitioner Bayron Jose Herrera-Avila is a citizen of Honduras who has resided in the United States since 2008. He has been in immigration detention since November 18, 2025, and is currently detained at the North Lake Processing Center. After taking custody of Mr. Herrera-Avila, ICE did not set bond. Mr. Herrera-Avila's immigration case had been administratively closed based on his approved I-130 petition and qualifying relief set forth by his immigration attorneys. He has no criminal history, previous or current, yet he was detained despite his approved marriage petition.

19. Respondent Kevin Raycraft is the Acting Director of the Detroit Field Office of ICE's Enforcement and Removal Operations division. As such, Acting Director Raycraft is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity.

20. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the INA and oversees ICE, which is responsible for Petitioner's detention. Ms. Noem has ultimate custodial authority over Petitioners and is sued in her official capacity.

21. Respondent Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.

22. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates are component agencies. She is sued in her official capacity.

23. Respondent Executive Office for Immigration Review (EOIR) is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings.

FACTS

Petitioner Bayron Jose Herrera-Avila

24. Petitioner Bayron Jose Herrera-Avila came to United States in 2008 at the age of 14. Mr. Herrera-Avila, who is now 31 years old, has resided in the United States continuously for over 17 years.

25. Mr. Herrera-Avila has been married for three years. His wife is a U.S. citizen, and the couple have two U.S. citizen daughters, a 2-month-old and a 3-

year-old. The family lives in Pontiac, Michigan.

26. Mr. Herrera-Avila is the sole financial provider for his U.S. Citizen family. He pays all the bills and is physically and emotionally present for his two daughters. He supports his wife physically and mentally through her medical conditions that have deteriorated since his detention. Her hypertension has elevated uncontrollably with doctors not being able to find ways to stabilize her.

27. On November 18, 2025, Mr. Contreras-Cervantes was pulled over by ICE officers in search of someone new to detain and arrested Mr. Herrera-Avila, presumably based on a belief that he was present in the United States without authorization.

28. After brief processing, Mr. Herrera-Avila was transferred to the North Lake Processing Center in Baldwin, Michigan, where he has been detained since November 20, 2025.

29. Since Mr. Herrera-Avila was arrested, ICE either did not conduct a custody determination or chose to continue detaining Mr. Herrera-Avila without providing an opportunity to post bond or be released under other conditions.

30. Mr. Herrera-Avila has not requested a bond hearing before an IJ because he is aware of how futile it is to request a bond while IJs continue to maintain they lack jurisdiction to hold bond hearings for individuals like him. It has continued to be futile even after major federal case law makes clear findings against the Respondents' interpretation of the INA.

31. Mr. Contreras-Cervantes is clearly neither a flight risk nor a danger to the community, as demonstrated by:

- His lack of criminal history anywhere in the world.
- His long-term residence in the United States, having entered as a child, lived here continuously since, and remained in the same Michigan County for the past 17 years.
- His U.S. citizen wife and two U.S. citizen children, all of whom rely on him for daily emotional and financial support. His family faces significant medical challenges: his wife has a severe hypertension that has required constant attention to stabilize.
- His deep ties to the community, including his commitment to his neighborhood's upkeep in Pontiac, Michigan.

32. Mr. Herrera-Avila, who is working closely with his immigration attorney, has strong claims for relief based on his family ties and long-term residence in the United States.

33. As a result of the IJ's bond denial, Mr. Herrera-Avila remains in detention. Without relief from this Court, he faces the prospect of months—or even years—in immigration custody, separated from wife, young children, and community. His detention is devastating for his family. His wife is barely hanging on and cannot continue doing so without his support at home.

34. His detention is emotionally devastating for his family and has caused severe financial strain as the family has lost his income, and his wife has had to dig into savings to care for the children.

LEGAL FRAMEWORK

35. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.

36. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens who are in removal proceedings. See 8 U.S.C. § 1229a. See also Jennings v. Rodriguez, 583

37. U.S. 281, 289 (2018) (explaining that § 1226(a) applies to those who are "already in the country" and are detained "pending the outcome of removal proceedings"). Under § 1226(a), individuals who are taken into immigration custody pending a decision on whether they are to be removed can be detained but are generally entitled to seek release on bond.[2] The bond may be set by ICE itself as part of an initial custody determination, see 8 C.F.R. § 1236.1(c)(8), and/or the individual may seek a bond hearing in immigration court at the outset of their detention, see 8 C.F.R. §§ 1003.19(a), 1236.1(d). Section 1226(a) is the statute that, for decades, has been applied to people like Petitioners who have been living in the United States and are charged with inadmissibility under § 1182(a)(6)(A)(i).

[2] Section § 1226 contains an exception for noncitizens who have been arrested, charged with, or convicted of certain crimes, who are subject to mandatory detention without bond. 8 U.S.C. § 1226(c). That exception does not apply to Petitioners here.

38. Second, the INA provides for mandatory detention of certain recently arrived noncitizens, namely those subject to expedited removal under 8 U.S.C. § 1225(b)(1), and other recent arrivals seeking admission under § 1225(b)(2). *See Jennings*, 583 U.S. at 287, 289 (explaining that § 1225(b)(2)'s mandatory detention scheme applies "at the Nation's borders and ports of entry" to noncitizens "seeking admission into the United States."). Section 1225(b)(2) is the statute that Respondents have suddenly decided is applicable to people like Petitioners.

39. Third, the INA also provides for detention of noncitizens who have already been ordered removed, *see* 8 U.S.C. § 1231. Section 1231 is not relevant here.

40. This case challenges Respondents' erroneous decision that Petitioners are subject to mandatory detention without bond under §1225(b)(2), rather than being bond-eligible under § 1226(a).

41. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104-208, Div. C, §§ 302–03, 110 Stat. 3009-546, 582–583, 585. Section 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

42. Following the 1996 enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not detained under § 1225 and that they were instead detained under

§ 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10,312, 10,323 (Mar. 6, 1997) (explaining that "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination.").

43. Thus, in the three decades that followed, people who entered without inspection and were subsequently placed in removal proceedings received bond hearings if ICE chose to detain them, unless their criminal history rendered them ineligible. That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

44. However, on July 8, 2025, ICE, "in coordination with" the Department of Justice, suddenly announced a new governmental policy that rejected the well-established understanding of the statutory framework and reversed decades of agency practice.

45. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission," claims that all persons who entered the United States without inspection are subject to mandatory detention without bond

under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended and affects those who have resided in the United States for months, years, and even—like some Petitioners—for decades or since infancy.

46. In decision after decision, federal courts—both nationwide and here in the Eastern District of Michigan—have rejected Respondents' sudden reinterpretation of the statutory scheme, and have instead held that § 1226(a), not § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. *See, e.g., Rodriguez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. Apr. 24, 2025); *Gomes v. Hyde*, No. 25-CV-11571, 2025 WL 1869299 (D. Mass. July 7, 2025); *Martinez v. Hyde*, --- F. Supp. 3d. ---, 2025 WL 2084238 (D. Mass. July 24, 2025); Order, *Bautista v. Santacruz Jr.*, No. 25-CV-1873 (C.D. Cal. July 28, 2025), Dkt. 14;[3] *Rosado v. Figueroa et al.*, No. 25-CV-02157, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025); *Lopez Benitez v. Francis*, --- F. Supp. 3d. ---, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); Order, *Gonzalez v. Noem*, 25-CV-2054 (C.D. Cal. Aug. 13, 2025), Dkt. 12; *Dos Santos v. Noem*, No. 25-CV-12052, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Maldonado v. Olson*, --- F. Supp. 3d. ---, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 25-CV-01789-ODW, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, --- F. Supp. 3d. ---, 2025 WL

[3] *Bautista et al. v. Santacruz Jr. et al.* is also a putative class action that certified a nationwide class that includes the Petitioner. On December 18, 2025, they issued a final order for declaratory relief for this nationwide class.

2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce,* No. 25 Civ. 6373, 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Leal-Hernandez v. Noem*, No. 25-CV-02428, 2025 WL 2430025 (D. Md. Aug. 24, 2025); Order, *Ruben Benitez et al. v. Noem et al.*, 25-CV-2190 (C.D. Cal. Aug. 26, 2025), Dkt. 11; *Larysa Kostak v. Trump et al.*, 25-CV-1093 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051, 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Diaz Diaz v. Mattivelo*, No. 25-CV-12226, 2025 WL 2457610 (D. Mass. Aug. 27, 2025); *Francisco T. v. Bondi*, No. 25-CV-03219, 2025 WL 2629839 (D. Minn. Aug. 29, 2025); *Lopez-Campos v. Raycraft*, --- F.Supp.3d. ---, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Garcia v. Noem*, No. 25-CV-02180, 2025 WL 2549431 (S.D. Ca. Sept. 3, 2025); *Hernandez Nieves v. Kaiser*, No. 25-CV-06921, 2025 WL 2533110 (N.D. Cal., Sept. 3, 2025); *Doe v. Moniz*, No. 25-CV-12094, 2025 WL 2576819 (D. Mass. Sept. 5, 2025); *Jimenez v. FCI Berlin, Warden*, No. 25-CV-326, 2025 WL 2639390 (D.N.H. Sept. 8, 2025); *Mosqueda v. Noem*, No. 25-CV-02304, 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Hinestroza v. Kaiser*, No. 25-CV-07559, 2025 WL 2606983 (N.D. Cal. Sept. 9, 2025); *Sampiao v. Hyde*, No. 25-CV-11981, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Guzman v. Andrews*, No. 25-CV-01015, 2025 WL 2617256 (E.D. Cal. Sept. 9, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Lopez Santos v. Noem*, No. 25-CV-01193, 2025 WL 2642278 (W.D. La. Sept. 11, 2025); *Salcedo Aceros v. Polly Kaiser et al.*, No. 25-CV-5624,

2025 WL 2637503 (N.D. Cal. Sept. 12, 2025); Order, *Lamidi v. FCI Berlin, Warden*, No. 25-CV-297 (D.N.H. Sept. 15, 2025), Dkt. 14; *Garcia Cortes, v. Noem et al.*, No. 25-CV-02677, 2025 WL 2652880 (D. Colo. Sept. 16, 2025); *Maldonado Vazquez v. Feeley et al.*, No. 25-CV-01542, 2025 WL 2676082 (D. Nev. Sept. 17, 2025); *Velasquez Salazar v. Dedos et al.*, No. 25-CV-00835, 2025 WL 2676729 (D.N.M. Sept. 17, 2025); *Hasan v. Crawford*, No. 25-CV-1408, 2025 WL 2682255 (E.D. Va. Sept. 19, 2025); *Yumbillo v. Stamper*, No. 25-CV-00479, 2025 WL 2688160 (D. Me. Sept. 19, 2025); *Beltran Barrera v. Tindall*, No. 25-CV-541, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Chogllo Chafla v. Scott*, No. 25-CV-00437, 2025 WL 2688541 (D. Me. Sept. 21, 2025); *Giron Reyes v. Lyons*, No. 25-CV-4048, 2025 WL 2712427 (N.D. Iowa Sept. 23, 2025); *Brito Barrajas v. Noem et al.*, No. 25-CV-00322, 2025 WL 2717650 (S.D. Iowa Sept. 23, 2025); *Lepe v. Andrews*, No. 25-CV-01163, 2025 WL 2716910 (E.D. Cal. Sept. 23, 2025); *Valencia Zapata v. Kaiser*, No. 25-CV-07492, 2025 WL 2741654 (N.D. Cal. Sept. 26, 2025).[4]

47. This list is undoubtedly incomplete. As the media has reported, the government's new no-bond policy has "led to dozens of recent rulings from gobsmacked judges who say the administration has violated the law and due process rights The pile up of decisions is growing daily." Kyle Cheney and Myah Ward,

[4] *But see Chavez v. Noem*, No. 25-CV-02325, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025) (denying request for *ex parte* temporary restraining order on grounds that the petitioners' motion did not raise "serious questions going to the merits.").

Trump's New Detention Policy Targets Millions Of Immigrants. Judges Keep Saying It's Illegal, Politico (Sept. 20, 2025, at 4:00 PM ET), https://www.politico.com/news/2025/09/20/ice-detention-immigration-policy-00573850.

48. In the past months, the Eastern District of Michigan has twice rejected Respondents' interpretation of the INA and granted writs of habeas corpus to detained noncitizens to whom Respondents denied a bond hearing. On August 29, 2025, Judge Brandy McMillion granted a writ of habeas corpus to an identically situated petitioner, concluding that "There can be no genuine dispute that Section 1226(a), and not Section 1225(b)(2)(A), applies to a noncitizen who has resided in this country for . . . years and was already within the United States when apprehended and arrested during a traffic stop, and not upon arrival at the border." *Lopez-Campos*, --- F.Supp.3d. ---, 2025 WL 2496379, at *8. And on September 9, 2025, Judge Robert White issued the same relief to another identically situated petitioner, reasoning that "the legislative history and agency guidance . . . in conjunction with the statutory interpretation" clearly entitles the petitioner to a bond hearing under § 1226(a). *Pizarro Reyes*, No. 25-CV-12546, 2025 WL 2609425, at *8.

49. On September 5, 2025, the BIA issued a precedential decision that rejected the overwhelming consensus of the federal courts. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). That decision held that all noncitizens who

entered the United States without admission or parole are ineligible for bond hearings before an IJ.

50. The *Yajure Hurtado* decision—like the government policy it seeks to uphold—defies the INA. As Judge Robert White wrote—after noting that federal district courts are not bound by agency interpretations of statutes—the BIA's reasoning is unpersuasive and "at odds with every District Court that has been confronted with the same question of statutory interpretation." *Pizarro Reyes*, 2025 WL 2609425, at *7. *See also Sampiao*, 2025 WL 2607924, at *8 n.11 (noting court's disagreement with BIA's analysis in *Yajure Hurtado*); *Beltran Barrera*, No. 25-CV-541, 2025 WL 2690565, at *5 (same); *Choglo Chafla*, No. 25-CV-00437, 2025 WL 2688541, at *7-8 (same).

51. As court after court has explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioners.

52. Section 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." These removal hearings are held under § 1229a to "decid[e] the inadmissibility or deportability of a[] [noncitizen]."

53. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. §

1226(c)(1)(E). Subparagraph (E)'s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a). As the *Rodriguez* court explained, "[w]hen Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies." *Rodriguez*, 779 F. Supp. 3d at 1256–57 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

54. Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole.

55. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. The statute's entire framework is premised on inspections at the border of people who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A). *See Jennings*, 583 U.S. at 287 (explaining that this mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible.").

56. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to people who have already entered and were residing in the United States (perhaps, like some Petitioners, for decades) at the time they were apprehended by

immigration authorities and detained. Because § 1226(a), not § 1225(b), is the applicable statute, Petitioners' detention without eligibility for bond is unlawful.

57. Petitioners seek relief from this Court because any months-long appeal to the BIA of an IJ's decision denying bond would be futile. A new request for a bond hearing is likewise futile. First, the agency's position is clear: both IJs and future panels of the BIA must follow the *Yajure Hurtado* decision. Further, the new governmental policy was issued "in coordination with DOJ," which oversees the immigration courts, including the BIA—up to and including the ability of the Attorney General to modify or overrule decisions of the BIA, *see* 8 C.F.R. § 1003.1(h). It is therefore unsurprising that the BIA has (erroneously) held that persons like Petitioners are subject to mandatory detention under § 1225(b)(2)(A), rather than being bond-eligible under § 1226(a). Moreover, in the numerous identical habeas corpus petitions that have been filed nationwide, EOIR and the Attorney General are often respondents and have consistently affirmed via briefing and oral argument that individuals like Petitioners are applicants for admission and subject to detention under § 1225(b)(2)(A). *See, e.g.,* Resp. to Pet., *Lopez Campos v. Raycraft*, No. 25-CV-12546 (E.D. Mich. Aug. 9, 2025), Dkt. 9; Resp. to Pet., *Pizarro Reyes v. Raycraft*, No. 25-CV-12546 (E.D. Mich. Aug. 27, 2025), Dkt. 4.

58. Second, by the time the BIA could even issue an appeal—a process that typically takes at least six months, *Rodriguez*, 779 F. Supp. 3d at 1245, and in many

cases roughly a year, *id.*—the harm of Petitioners' unlawful detention will be impossible to remediate. Nor will the downstream effects of continued detention be remediable: Petitioners' families and communities will be left without caretakers, breadwinners, and contributors for months.

59. Third, neither IJs nor the BIA have the authority to decide constitutional claims. *See Sterkaj v. Gonzales*, 439 F.3d 273, 279 (6th Cir. 2006). Here, Petitioners claim not only that Respondents are unlawfully detaining them without bond hearings under an inapplicable statute, but also that such detention violates their constitutional right to due process if the government seeks to deprive them of their liberty.

CLAIMS FOR RELIEF

COUNT I

Violation of the INA

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

61. Respondents are unlawfully detaining Petitioner without bond pursuant to the mandatory detention provision at 8 U.S.C. § 1225(b)(2).

62. Section 1225(b)(2) does not apply to Petitioner, who previously entered the country and have long been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents.

63. Instead, Petitioners should be subject to the detention provisions of 8 U.S.C. § 1226(a) and are therefore entitled to a custody determination by ICE, and if custody is continued, to a custody redetermination (i.e., a bond hearing) by an immigration judge.

64. Respondents' application of 8 U.S.C. § 1225(b)(2) to Petitioners results in their unlawful detention without the opportunity for a bond hearing and violates the INA.

COUNT II

Violation of Due Process

65. Petitioners repeat, re-allege, and incorporate by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

66. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

67. Petitioners have a fundamental interest in liberty and being free from official restraint.

68. The government's detention of Petitioners without an opportunity for a custody determination or bond hearing to decide whether each of them is a flight risk or danger violates their right to due process.

PRAYER FOR RELIEF

WHEREFORE, Petitioners pray that this Court grant the following relief:

a. Assume jurisdiction over this matter;

b. Issue writs of habeas corpus requiring that Respondents release each Petitioner from custody or, in the alternative, provide each Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) within 7 days;

c. Enjoin Respondents from transferring Petitioners from the jurisdiction of this District pending these proceedings;

d. Declare that 8 U.S.C. § 1226(a)—and not 8 U.S.C. § 1225(b)(2)(A) — is the appropriate statutory provision that governs Petitioners' detention and eligibility for bond because they are not recent arrivals "seeking admission" to the United States, and instead were already residing in the United States when they were apprehended and charged as inadmissible for having allegedly entered the United States without inspection;

e. Award Petitioners 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

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

Respectfully submitted,

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Dated: December 23, 2025

CERTIFICATE OF SERVICE

I hereby certify that on December 23, 2025 *Petitioner's Petition for Writ of Habeas Corpus* was filed with the Court Clerk via ECF system e-filing system which will give notice of such filing to all parties of record.

/s/Ronald Blanco
Ronald Blanco