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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Case No.: _____

CIRILO SAAVEDRA-GUZMAN
A# [redacted].

Plaintiff,

vs.

JOHN CANTU, Phoenix Field Office Director, Immigration and Customs Enforcement and Removal Operations ("ICE/ERO");
TODD LYONS, Acting Director of Immigration Customs Enforcement ("ICE");
U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT;
KRISTI NOEM, Secretary of the Department of Homeland Security ("DHS");
U.S. DEPARTMENT OF HOMELAND SECURITY ("DHS");
PAMELA BONDI, ATTORNEY GENERAL OF THE UNITED STATES; AND
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW,
Defendants

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. This is a Writ for Habeas Corpus. Petitioner Cirilo Saavedra-Guzman A# [redacted], is a citizen of Mexico who Respondents have detained since November 17, 2025 at the Eloy Federal Contract Facility, located at 1705 East Hanna Road in Eloy, Arizona 85131. A Notice to Appear was filed with the Immigration Court, charging him with removability under 8 U.S.C. § 1182(a)(6)(A)(i)[present without admission or parole] [and/or 8 U.S.C. § 1182(a)(7)(i)(I)].

2. Petitioner is being unlawfully detained because the Department of Homeland Security (DHS) and the Executive Office for Immigration Review (EOIR) of the Department of Justice (DOJ) have erroneously concluded that, based on the charges in the Notice to Appear, he is subject to mandatory detention, and not eligible for bond until next year until May 2026.

3. DHS issued a directive on July 8, 2025, instructing all Immigration and Customs Enforcement (ICE) employees to consider anyone inadmissible under 8 U.S.C. §1182(a)(6)(A)(i)—i.e., those, like Petitioner, who are alleged to have entered the United States without inspection— to be an "applicant for admission" under 8 U.S.C. § 1225(b)(2)(A) and therefore subject to mandatory detention. Consistent with this policy, DHS and EOIR have denied Petitioner release from immigration custody.

4. The Executive Office for Immigration Review (EOIR) of the Department

of Justice (DOJ) has recently affirmed that view. In a published decision, dated September 5, 2025, the Board of Immigration Appeals held that "Immigration Judges lack authority to hear bond requests or to grant bond to [noncitizens] who are present in the United States without admission." *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 229 (BIA 2025)("no admission, no bond."). He made a bond motion, asserting his class membership in *Maldonado Bautista et al. v. Ernesto Santacruz Jr. et al.,* No. 5:25-CV-01873-SSS-BFM, 2025 WL 3288403 (C.D. Cal. Nov. 25, 2025), but jurisdiction over his motion was denied by the Immigration Judge.

JURISDICTION AND VENUE

5. At the time this Petition is filed, and through the present day, Petitioner has been detained at the Eloy Facility, which is located in Eloy, Arizona. The Immigration Court is at that same location. He is in the physical custody of John Cantu, Field Office Director of Enforcement and Removal Operations Phoenix Field Office.

6. This court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 et. seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 *et. seq*., the All Writs Act, 28 U.S.C. § 1651, and the Immigration and Nationality Act, 8 U.S.C. § 1252(e)(2).

7. Under 28 U.S.C. § 2241 and § 1391(b), (e), venue is proper in this district because, when this case was initiated and through the present day, Petitioner has

been in Respondents' custody at Eloy, Arizona within the District of Arizona. *See, e.g., Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973). Venue is further proper because a substantial part of the events or omissions giving rise to Petitioner's claims occurred in this district.

REQUIREMENTS OF 28 U.S.C. § 2243

8. The court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith," unless 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.*

9. 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). "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 Petitioner within the four corners of the application." *Yong v. I.N.S.,* 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

PARTIES

10. Petitioner Cirilo Saavedra-Guzman [[redacted]] is a 42 year-old native and citizen of Mexico who entered the United States in 1999 in his late teens,

without inspection. Upon information and belief, he has no criminal record. He is unmarried, and has two United States citizen children, ages 18 and 22. He is held detained pursuant to a charge of removability under 8 U.S.C. § 1182(a)(6)(A)(i)(present without admission or parole). He previously requested a bond hearing, but, based on the charge, he hasn't been afforded bond consideration of any kind.

11. Respondent John Cantu is the Field Office Director of Enforcement and Removal Operations, Phoenix, U.S. Immigration and Customs Enforcement, Department of Homeland Security. As such, Mr. Cantu is Petitioner's immediate custodian because Eloy is within the Phoenix jurisdiction. He is named in his official capacity.

12. Respondent Todd Lyons is the acting director of U.S. Immigration and Customs Enforcement, and he has authority over the actions of respondent John Cantu, and ICE in general. Respondent Lyons is a legal custodian of Petitioner. He is named in his official capacity.

13. Respondent Kristi Noem is the Secretary of the Department of Homeland Security (DHS) and has authority over the actions of all other DHS Respondents in this case, as well as all operations of DHS. Respondent Noem is a legal custodian of Petitioner and is charged with faithfully administering the immigration laws of the United States. She is named in her official capacity.

14. Respondent Pamela Bondi is the Attorney General of the United States, and as such has authority over the Department of Justice and is charged with faithfully administering the immigration laws of the United States. She is named in her official capacity.

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

16. Respondent U.S. Immigration Customs Enforcement is the federal agency responsible for custody decisions relating to non-citizens charged with being removable from the United States, including the arrest, detention, and custody status of non-citizens.

17. 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.

FACTUAL BACKGROUND

18. Petitioner Cirilo Saavedra-Guzman [[redacted]] is a 42 year-old native and citizen of Mexico who entered the United States in 1999, while in his late teens, without inspection. Upon information and belief, he has no criminal record. He is unmarried, and has two United States citizen children, ages 18 and 22. He's filed applications for relief in cancellation of removal for non-permanent residents,

and withholding of removal and Torture Convention relief in the alternative. He last appeared in immigration court on December 16, 2025, and his next master calendar hearing is set for January 5, 2026 at 9 am. He is held detained pursuant to a charge of removability under 8 U.S.C. § 1182(a)(6)(A)(i)(present without admission or parole). He was heard on his bond motion, but the Judge found a lack of jurisdiction and so did not consider give any consideration on the merits.

Indeed, any request for bond redetermination before EOIR is futile as the BIA recently held in a published decision that persons, like Petitioner, who are charged under 8 U.S.C. § 1182(a)(6)(A)(i) are subject to mandatory detention as applicants for admission under 8 U.S.C. § 1225(b)(2)(A). *See Mosqueda v. Noem*, 2025 WL 2591530, at *7 (C.D. Cal. Sept. 8, 2025) (noting that BIA's decision in Yajure Hurtado renders prudential exhaustion futile). Pursuant to Respondents' new policy, Petitioner remains in mandatory detention. Absent relief from this court, Petitioner faces the prospect of months in immigration custody without ever receiving an individualized hearing justifying Petitioner's detention in violation of the Immigration and Nationality Act, and Due Process.

EXHAUSTION

19. No statutory requirement of administrative exhaustion applies to Petitioner's case. Moreover, the judicially created "general rule that parties exhaust prescribed administrative remedies before seeking relief from the federal courts"

does not apply to Petitioner's' present challenge, as there are no prescribed administrative remedies to which Petitioner could resort. *McCarthy v. Madigan*, 503 U.S. 140, 144–45 (1992), superseded by statute on other grounds as recognized in *Woodford v. Ngo*, 548 U.S. 81 (2006).

20. In particular, DHS has taken the position that noncitizens like Petitioner who entered without inspection are subject to mandatory detention under 8 U.S.C. § 1225, and the Executive Office for Immigration Review has affirmed that view. In a published decision, the Board of Immigration Appeals recently held that "Immigration Judges lack authority to hear bond requests or to grant bond to [noncitizens] who are present in the United States without admission." *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Under the BIA's interpretation, Petitioner is ineligible for bond as a noncitizen who entered the United States without inspection. Accordingly, there are no administrative remedies that Petitioner could exhaust before seeking habeas relief. *See Singh v. Lewis*, No. 4:25-CV-96-RGJ, 2025 WL 2699219, at *3 (W.D. Ky. Sept. 22, 2025) ("[t]he United States has made clear their position on Section 1225, and it is being applied at all levels within the DHS. Therefore, it is unlikely that any administrative review would lead to the United States changing its position and precluding judicial review"); *Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, 2025 WL 2496379, at *4 (E.D. Mich. Aug. 29, 2025) ("Because exhaustion would be futile and unable to provide [petitioner] with

the relief he requests in a timely manner, the court waives administrative exhaustion and will address the merits of the habeas petition.").

21. Further, neither an immigration judge nor the Board of Immigration Appeals can rule on a petitioner's constitutional claims. *See Matter of R-A-V-P-*, 27 I. & N. Dec. 803, 804 n.2 (B.I.A. 2020) (holding that IJs and the BIA lack any authority to consider the constitutionality of the statutes or regulations governing immigration detention that they administer and are bound to follow); *Matter of C--*, 20 I. & N. Dec. 529, 532 (B.I.A. 1992) ("[I]t is settled that the immigration judge and this Board lack jurisdiction to rule upon the constitutionality of the Act and the regulations."); *see also Gonzalez v. O'Connell,* 355 F.3d 1010, 1017 (7th Cir. 2004) (noting that "the BIA has no jurisdiction to adjudicate constitutional issues").

22. The Court should find administrative exhaustion would be futile. *See Vasquez- Rodriguez v. Garland*, 7 F.4th 888, 896 (9th Cir. 2021) ("where the agency's position appears already set and recourse to administrative remedies is very likely futile, exhaustion is not required."). BIA decisions are binding on immigration judges, and *Yajure Hurtado* thus precludes an IJ from finding jurisdiction over noncitizens like Petitioner to hold a custody redetermination hearing. Therefore, judicial intervention enjoining Respondents from preventing Petitioner from having a bond hearing pursuant to the holding in *Yajure Hurtado* is necessary to enable Petitioner to avail himself of his administrative remedies.

23. Therefore, the court should consider the merits of this Petition.

LEGAL FRAMEWORK

I. Detention Authority and Respondent's Efforts to Expand Mandatory Detention

24. The Immigration and Nationality Act [INA] prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.

25. First, 8 U.S.C. § 1226 authorizes the permissive detention of noncitizens "already in the country." *See Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018). 8 U.S.C. § 1226(a) "sets out the default rule: The Attorney General may issue a warrant for the arrest and detention of a[] [noncitizen] 'pending a decision on whether the [noncitizen] is to be removed from the United States." *Id.* at 288 (quoting § 1226(a) (emphasis added)).

26. Individuals in Section 1226(a) detention are generally entitled to a bond hearing at the outset of their detention. *See* § 1226(a)(2); 8 C.F.R. §§ 1003.19(a), 1236.1(c)(8), (d)(1); *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239, 1247 (W.D. Wash. 2025) ("those detained under Section 1226(a) are entitled to a bond hearing before an [immigration judge] at any time before entry of a final removal order.").

27. Section 1226(c) "carves out a statutory category" of noncitizens from Section 1226(a) for whom detention is mandatory, comprised of individuals who

have committed certain "enumerated … criminal offenses [or] terrorist activities." *Jennings*, 583 U.S. at 289 (citing § 1226(c)(1)). Among the individuals carved out and subject to mandatory detention are certain categories of "inadmissible" noncitizens. § 1226(c)(1)(A), (D), (E). Reference to such inadmissible noncitizens makes clear that, by default, people who are applicants for admission but encountered in the interior are afforded a bond hearing under subsection 1226(a). Courts have recently confirmed this understanding of Section 1226. *See Rodriguez Vazquez*, 779 F. Supp. 3d at 1257 (*citing Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)) ("When Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies."); *see also, e.g., Gomes v. Hyde*, No. 1:25-CV11571-JEK, 2025 WL 1869299, at *6 (D. Mass. July 7, 2025) ("inadmissibility on one of the three grounds specified in Section 1226(c)(1)(E)(i) is not by itself sufficient to except [a noncitizen] from Section 1226(a)'s discretionary detention framework").

28. Second, the INA provides for mandatory detention of certain categories of noncitizens "seeking entry into the United States" under 8 U.S.C. § 1225(b). *Jennings*, 583 U.S. at 297; see § 1225(b) ("Inspection of applicants for admission"). In Jennings, the Supreme Court explained that this mandatory 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 inadmissible." *Jennings*, 583

U.S. at 287 (emphasis added). Noncitizens subject to mandatory detention under Section 1225 may not be released except "for urgent humanitarian reasons or significant public benefit" under the parole authority provided by 8 U.S.C. § 1182(d)(5)(A). *See id.* at 300.

29. Section 1225 has two subparts requiring mandatory detention: subsection (b)(1) mandates detention of noncitizens charged with enumerated grounds of inadmissibility and placed in expedited removal proceedings, and subsection (b)(2) mandates detention of recently arrived noncitizens seeking entry at a border or port of entry. *See infra.*

30. Third, the INA provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)–(b).

31. This case concerns whether Petitioner may be detained with a right to a bond hearing pursuant to Section 1226(a) (as the law requires) or whether he falls within mandatory detention as an "arriving alien" under Section 1225(b)(2) as DHS policy erroneously requires.

32. Respondents have recently taken various steps seeking to expand their use of mandatory detention under Section 1225(b)(2) beyond its plain language.

33. On July 8, 2025, ICE, "in coordination with" DOJ, announced a new policy that rejected well-established understanding of the statutory framework and

reversed decades of practice. *See* U.S. Immigration and Customs Enforcement, Interim Guidance Regarding Detention Authority for Applicants for Admission (July 8, 2025), *https://www.aila.org/ice-memo-interimguidance-regarding-detention-authority-for-applications-for-admission.*

34. The new policy claims that all persons who entered the United States without inspection shall now be deemed "applicants for admission" under 8 U.S.C. § 1225 and therefore are subject to mandatory detention 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 years, and even decades.

35. On September 5, 2025, the Board of Immigration Appeals (BIA) published a decision adopting this same position. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). That decision holds that all noncitizens who entered the United States without admission or parole are considered applicants for admission and are ineligible for immigration judge bond hearings.

II. Respondents' Policy on Section 1225(b)(2) Is Incorrect

36. Respondents' policy that all undocumented noncitizens who entered without inspection are considered applicants for admission and subject to mandatory detention under Section 1225(b)(2)(A) is incorrect. Statutory text, statutory framework, Congressional intent, longstanding practice of the agency, and decisions of many federal courts across the nation – including this one – all limit Section

1225(b)(2)'s scope to recently arrived noncitizens seeking admission at a border or port of entry.

a. Statutory Text

37. The text of Section 1225, along with its placement in the overall detention scheme of the INA, make clear that the terms "applicant for admission" and "seeking admission" in Section 1225(b)(2) do not include individuals who have entered without inspection and are apprehended when already inside the United States.

38. Section 1225 is titled: "Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing." (emphasis added). As courts have recognized, "[t]he added word of 'arriving' indicates that the statute governs 'arriving' noncitizens, not those present already." *Beltran Barrera v. Tindall*, No. 3:25-CV-541-RGJ, 2025 WL 2690565, at *4 (W.D. Ky. Sept. 19, 2025) (*citing Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425, at *5 (E.D. Mich. Sept. 9, 2025)). This limitation is particularly clear when compared to Section 1226's general title: "Apprehension and detention of aliens."

39. Further, Section 1225(b)(2)'s specific subheading, "Inspection of Other Aliens," subsection 1225(b)(2)(B)'s mention of "crewm[e]n" and "stowaway[s]," and subsection 1225(b)(2)(C)'s use of the active language "arriving," reinforce the limited scope of Section 1225(b)(2)'s applicability to those who have recently arrived at a border or port of entry.

40. Finally, the term "seeking" in "seeking admission" "implies action – something that is currently occurring, and in this instance, would most logically occur at the border upon inspection." *Lopez-Campos*, 2025 WL 2496379, at *6 (E.D. Mich. Aug. 29, 2025); *see also Beltran Barrera*, 2025 WL 2690565, at *4. Noncitizens who are present in the country for years are not "seeking admission." *Lopez-Campos*, at *6; *Beltran Barrera*, at *4.

b. Statutory Framework

41. The statutory framework further supports that Section 1225(b)(2) does not apply to noncitizens, like Petitioner, who has lived in the United States for years and who was apprehended and placed in detention while residing within the United States.

42. The INA's entire framework is premised on Section 1225 governing detention of "arriving [noncitizens]" while Section 1226 "applies to [noncitizens] already present in the United States." *Jennings,* 583 U.S. at 288, 301; *see also Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588, at *8 (S.D.N.Y. Aug. 13, 2025) ("[T]he line historically drawn between sections 1225 and 1226, which makes sense of their text and the overall statutory scheme, is that section 1225 governs detention of non-citizens 'seeking admission into the country,' whereas section 1226 governs detention of non-citizens 'already in the country.'") (*citing Jennings,* 583 U.S. at 288-89); *Martinez v. Hyde*, 2025 WL 2084238, at *8 (D. Mass.

July 24, 2025) ("The idea that a different detention scheme would apply to non-citizens 'already in the country,' as compared to those 'seeking admission into the country,' is consonant with the core logic of our immigration system ") (*citing Jennings*, 583 U.S. at 289).

43. A fundamental principle of statutory construction is that courts must interpret statutes to give meaning to all provisions and avoid reading out or rendering superfluous any single provision. *Corley v. United States*, 556 U.S. 303, 314 (2009) ("one of the most basic interpretive canons . . . [a] statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant[.]"). The government's current reading of Section 1225(b)(2) violates this principle.

44. Section 1226(c) includes carve outs for certain categories of inadmissible noncitizens, who would otherwise fall under Section 1226(a), that are instead subject to mandatory detention. 8 U.S.C. § 1226(c)(1)(A), (D), (E). The inclusion of these carve outs in Section 1226(c) indicates that, contrary to Respondents' interpretation, there are noncitizens who have not been admitted and that are not governed by Section 1225's mandatory detention scheme. Indeed, if the government's interpretation were correct, it would render these portions of Section 1226(c) superfluous since those same individuals would already be subject to mandatory detention under Section 1225(b)(2).

45. The recent amendment to Section 1226(c) confirms this statutory framework. Just this year, Congress passed the Laken Riley Act, which added additional categories of Section 1226(a) carve outs that are now subject to mandatory detention under Section 1226(c). Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025); 8 U.S.C. § 1226(c)(1)(E). Specifically, the Laken Riley Act mandates the detention of noncitizens who are inadmissible under §§ 1182(a)(6)(A) (noncitizens "present in the United States without being admitted or paroled"), 1182(a)(6)(C) (misrepresentation), or 1182(a)(7) (lacking valid documentation) and who have been arrested for, charged with, or convicted of certain crimes. *Id.* If Section 1225(b)(2) were already meant to subject these groups of inadmissible noncitizens to mandatory detention, it would render this portion of the Laken Riley Act redundant. *See Beltran Barrera*, 2025 WL 2690565, at *4; *LopezCampos*, 2025 WL 2496379, at *8.

c. Congressional Intent and Longstanding Agency Practice

46. Congressional intent and longstanding historical practice underscore Petitioner's reading of the statute.

47. The current detention system has been in place since the passage 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, 3009–582 to 3009–583, 3009–585.

48. Following the enactment of the IIRIRA, the Executive Office for

Immigration Review drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under Section 1225 and that they were instead detained under Section 1226(a) and eligible for bond and bond redetermination. *See* 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

49. In the decades that followed, most people who entered without inspection and were apprehended inside the United States were detained under Section 1226(a) and received bond hearings, 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 immigration judge 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 Section 1226(a) simply "restates" the detention authority previously found at Section 1252(a)).

d. Recent Federal Court Decisions Confirming Petitioner's Position

50. Numerous federal courts have reached conclusions consistent with Petitioner's position, with more reaching the same conclusion nearly every day.

51. For example, after immigration judges in Tacoma, Washington, stopped providing bond hearings for persons who entered the United States without inspection, the U.S. District Court in the Western District of Washington found that such a reading of the INA is likely unlawful, and that Section 1226(a), not Section 1225(b), applies to noncitizens who are not apprehended upon arrival to the United

States. *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239.

52. Other courts have reached the same conclusion, rejecting Respondent's erroneous interpretation of the INA both prior to and since ICE implemented its July 8, 2025, interim guidance. *See, e.g., Maldonado Bautista et al. v. Ernesto Santacruz Jr. et al.,* No. 5:25-CV-01873-SSS-BFM, 2025 WL 3288403 (C.D. Cal. Nov. 25, 2025); *Arrazola-Gonzalez v Noem*, 5:25-cv-01789-ODW-DFM, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Torres Maldonado v. Olson*, et al, Case No. 1:25-cv-12762, ECF No. 16 (N.D. Ill. Oct 24, 2025) (Daniels, J.); *Patel v. Crowley*, No. 25 C 11180, 2025 WL 2996787 (N.D.Ill. Oct. 24, 2025) (Cummings, J.); *Sanchez v. Holt*, Case No. 1:25-cv-12453, ECF No. 16 (N.D. Ill. Oct 24, 2025) (Jenkins, J.); *Ochoa Ochoa v. Noem, et al*, Case No. 1:25-cv10865, EFF No. 20 (N.D. Ill. Oct. 16, 2025) (Jenkins, J.); *GZT et al v. Smith et al*, Case No. 25- C-12802, ECF No. 14 (N.D. Ill. Oct. 21, 2025) (Ellis, J.); *Jose Alejandro v. Olson et al*, 1:25-cv02027-JPH-MKK (S.D. Ind. Oct. 11, 2025); *H.G.V.U. v. Smith*, Case No. 1:25-cv-10931, ECF No. 34 (N.D. Ill. Oct. 20, 2025) (Coleman, J.); *Gomes v. Hyde*, 2025 WL 1869299, at *8 (D. Mass. July 7, 2025); *Martinez v. Hyde*, 2025 WL 2084238, at *8 (D. Mass. July 24, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588, at *8 (S.D.N.Y. Aug. 13, 2025); *Garcia Jimenez v. Kramer*, No. 4:25-cv-03162-JFB-RCC, 2025 WL 2374223 (D. Neb. Aug. 14, 2025); *Aguilar Maldonado v. Olson*, No. 25-CV-3142 (SRN/SGE), 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Jacinto v. Trump, et al.*, 4:25-cv-03161-JFB-RCC,

2025 WL 2402271 (D. Neb. August 19, 2025); *Leal-Hernandez v. Noem*, 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Lopez-Campos*, 2025 WL 2496379; *Herrera Torralba v. Knight*, 2:25-cv-03166-RFBDJA, 2025 WL 2581792 (D. Nev. Sept. 5, 2025).

53. The BIA's decision in *Yajure Hurtado* on September 5, 2025 has also not impacted the District Courts' decisions rejecting Respondents' position. *See, e.g., Patel v. Crowley*, No. 25 C 11180, 2025 WL 2996787, at *1 (N.D.Ill. Oct. 24, 2025) (finding the decision in *Matter of Yajure Hurtado* unpersuasive for several reasons, including the BIA's inconsistent view, its conflict with implementing regulation, and district courts' overwhelming rejection of its expansive interpretation of 1225(b));

Patel v. Crowley, No. 25 C 11180, 2025 WL 2996787, at *1 (N.D.Ill. Oct. 24, 2025) (finding the decision in *Matter of Yajure Hurtado* unpersuasive for several reasons, including the BIA's inconsistent view, its conflict with implementing regulation, and district courts' overwhelming rejection of its expansive interpretation of 1225(b));

Ochoa Ochoa v. Noem et al, 1:25-cv-10865 (N.D. Ill. Oct. 16, 2025) (rejecting *Matter of Yajure Hurtado* as it is non-binding and unpersuasive under *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 413 (2024) given the BIA's inconsistent views); *Singh v. Lewis*, 2025 WL 2699219, at *3 (disagreeing with BIA's analysis and according no deference under *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 413 (2024)); *Beltran Barrera*, 2025 WL 2690565, at *5 (same); *Pizarro Reyes v.*

Raycraft, 2025 WL 2609425, at *6-8 (same); *Sampiao v. Hyde*, 2025 WL 2607924, at *8 n.11 (D. Mass. Sept. 9, 2025) (same); *Aceros v. Kaiser*, No. 25-CV-06924-EMC (EMC), 2025 WL 2637503, at *9 (N.D. Cal. Sept. 12, 2025) (same).

III. Petitioner's Detention Violates the Immigration and Nationality Act

54. Petitioner's detention is not authorized under Section 1225(b)(2). As discussed above, mandatory detention under Section 1225(b)(2) applies only to recently arrived noncitizens seeking admission at a border or port of entry, not individuals like Petitioner who entered without inspection, were released or were never encountered, and were later detained inside the country. As such, Petitioner is not subject to mandatory detention under Section 1225(b)(2).

55. Petitioner's detention is not authorized under Section 1226(a), either. As discussed above, Section 1226(a)'s discretionary detention framework requires a bond hearing to make an individualized custody determination based on Petitioner's risk of flight or dangerousness. Here, Respondents have failed to provide such a hearing. Further, there is no information indicating that Petitioner is a flight risk or danger to the community.

56. Lacking any statutory basis for this detention, Respondents must release Petitioner or, in the alternative, promptly hold a bond hearing to determine whether he should remain detained.

IV. Due Process Clause

57. Noncitizens are entitled to due process of the law under the Fifth Amendment. *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993). To determine whether civil detention violates a noncitizen's Fifth Amendment due process rights, courts apply the three-part test in *Mathews v. Eldridge*, 424 U.S. 319 (1976).

58. Under *Mathews*, courts weigh these three factors: 1) "the private interest that will be affected by the official action;" 2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards;" and 3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." 424 U.S. at 335.

a. Private Interest

59. As to the first Mathews factor, "[t]he interest in being free from physical detention" is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529, 531 (2004). Petitioner's been detained at ICE's Eloy Contract Facility in Eloy Arizona. This detention prevents him from supporting himself, and deprives him of any privacy and freedom of movement and the ability to assist his counsel in obtaining relevant supporting documents for his case.

b. Risk of Erroneous Deprivation

60. As to the second Mathews factor, courts must "assess whether the challenged procedure creates a risk of erroneous deprivation of individuals' private rights and the degree to which alternative procedures could ameliorate these risks." *Gunaydin v. Trump*, No. 25-CV-01151 (JMB/DLM), 2025 WL 1459154, at *8 (D. Minn. May 21, 2025). The current procedures cause an erroneous deprivation of Petitioner's liberty interest in remaining free from detention.

61. As discussed above, the statutory text, statutory framework, Congressional intent, the longstanding practice of the agency, and the decisions of many federal courts across the nation leave no doubt that Section 1225(b)(2) applies only to recently arrived noncitizens seeking entry at a border or port of entry, not noncitizens who entered without inspection and were detained inside the country.

62. Here, Petitioner was not arriving at a border or port of entry when he was detained, nor was he seeking admission. Instead, Petitioner entered without inspection, and lived in the United States for many years before being detained. As such, he is not subject to mandatory detention under Section 1225(b)(2).

63. It is clear based on the foregoing that the government's current procedure of subjecting Petitioner to mandatory detention under Section 1225(b)(2) creates a substantial risk of erroneous deprivation of Petitioner's interest in being free from arbitrary confinement.

64. Additionally, there are reasonable alternatives available for Respondent to pursue. As discussed above, 8 U.S.C. section 1226(a) applies to noncitizens facing charges of inadmissibility, including noncitizens like Petitioner who entered without inspection, were released or never apprehended, and were later detained while residing inside the country. As such, proper application of the INA's detention scheme allows for the possibility of detaining Petitioner under Section 1226(a), but first requires a bond hearing to make an individualized determination of flight risk, or dangerousness. Such a hearing has not occurred. Without it, the risk of erroneous deprivation of Petitioner's freedom is high. *See Singh v. Lewis*, 2025 WL 2699219, at *9 ("the risk of erroneously depriving him of his freedom is high if the IJ fails to assess his risk of flight or dangerousness.").

c. Government Interest

65. As to the third Mathews factor, the government's interest in maintaining the current procedure is minimal. The new interpretation of Section 1225(b)(2) – that people like Petitioner who have resided in the United States for years are now subject to mandatory detention – flies in the face of the statutory text, statutory framework, Congressional intent, almost three decades of prior practice, and the decisions of federal courts across the nation. Any government interest in public safety or ensuring that Petitioner attend future immigration proceedings would be satisfied through proper application of Section 1226(a), which requires a bond

redetermination hearing where an immigration judge will consider Petitioner's individualized facts and circumstances to determine whether he is a danger to the community or a flight risk.

CLAIMS FOR RELIEF

COUNT I - ***Violation of the Immigration and Nationality Act***

66. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

67. 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 ground of inadmissibility for entering the U.S. without inspection. As relevant here, it does not apply to those who previously entered the country without inspection, and, if issued NTAs, were released without bond, and have been residing in the United States prior to being detained by Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231. Respondents' actions also violate § 1226(a) because, to date, Respondents have refused to consider Petitioner for bond or release on his own recognizance without ever demonstrating that Petitioner is a flight risk or danger to others.

68. The application of § 1225(b)(2) to Petitioner unlawfully mandates Petitioner's continued detention, and violates the Immigration and Nationality Act.

COUNT II **-** ***Violation of Due Process***

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

70. 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).

71. Petitioner has a fundamental liberty interest in being free from official restraint.

72. Petitioner may only be subject to discretionary detention under 8 U.S.C. § 1226, which provides for release on bond. Respondents now erroneously detain Petitioner under the mandatory provision in § 1225(b)(2). Respondents' detention of Petitioner without a bond hearing to determine flight risk or danger to others violates his due process rights.

73. BURDEN SHIFTING: While Petitioner has an excellent application for bond under the ordinary process, when DHS has unconstitutionally detained him without access to a bond hearing, an overwhelming consensus of courts place the *burden on the government* to prove by clear and convincing evidence that the detainee poses a danger or is flight risk to justify further detention. *See Gonzalez v.*

Barr, 955 F.3d 762, 772 (9th Cir. 2020); *Ochoa Ochoa v. Noem et al*, 1:25-cv-10865 (N.D. Ill. Oct. 16, 2025); *Sanchez v. Holt*, Case No. 1:25-cv-12453, ECF No. 16 (N.D. Ill. Oct 24, 2025; *G.Z.T. et al v. Smith et al*, Case No. 25-C-12802, ECF No. 14 (N.D. Ill. Oct. 21, 2025); *Velasco Lopez v. Decker*, 978 F.3d 842, 855 (2d Cir. 2020); *Hernandez-Lara v. Lyons*, 10 F.4th 19 (1st Cir. 2021); *Lopez-Arevelo v. Ripa*, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025) (ordering a prompt bond hearing or release); *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025) (same); *Roman v. Noem*, 2025 WL 2710211 (D. Nev. Sept. 23, 2025) (same). This modified the typical burden of proof at an immigration bond hearing where the noncitizen often bears the burden of proof. *See* 8 C.F.R. § 236.1(c)(8).

74. "The burden shifting [to the government] reflects the concern that a noncitizen 'should not have to share the risk of error equally' in the context of a due process violation and Petitioner's 'loss of liberty.'" *Ochoa Ochoa v. Noem et al*, 1:25-cv-10865 (N.D. Ill. Oct. 16, 2025) *citing German Santos v. Warden Pike Cnty. Corr. Facility*, 965 F.3d 203, 214 (3d Cir. 2020) and *Lopez Santos v. Clesceri*, 2021 WL 663180, at *5 (N.D. Ill. Feb. 19, 2021). Accordingly, if Petitioner is not granted release, he should be granted a bond hearing before an immigration judge, and the Government should bear the burden of justifying ongoing detention by clear and convincing evidence of dangerousness or flight risk.

PRAYER FOR RELIEF

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

a. Assume jurisdiction over this matter;

b. Immediately enjoin Respondents from moving any Petitioner outside of the United States or transferring Petitioner to any other federal judicial district.

c. Issue a writ of habeas corpus requiring Respondents provide Petitioner a bond hearing before the Eloy Immigration Court pursuant to 8 U.S.C. § 1226(a), within five days, in which the government shall bear the burden by clear and convincing evidence of dangerousness or flight risk to justify continued detention;

d. Declare that Petitioner's continued detention violates the Immigration and Nationality Act, and the Due Process Clause of the Fifth Amendment;

e. 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

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

December 29, 2025

Respectfully submitted,

/s/ Vital D'Carpio

Vital D'Carpio
Counsel for Petitioner

VERIFICATION

Pursuant to 28 U.S.C. §§ 2242 and 1746, I declare under penalty of perjury that the facts set forth in the foregoing Petition for Habeas Corpus are true and correct based on information available at the time of this filing.

December 29, 2025

/s/ Vital D'Carpio

Vital D'Carpio
Counsel for Petitioner