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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

KELYN SANCHEZ FIGUEROA, )  
Alien Number:  )  
Petitioner, )  
 )  
v. )  
 )  
PAMELA BONDI, U.S. Attorney General )  
 )  
KRISTI NOEM, U.S. )  
Secretary of Homeland Security ("DHS"), )  
 )  
TODD LYONS, Acting )  
Director U.S. Immigration and Customs )  
Enforcement, )  
 )  
JUAN AGUDELO, Acting Miami Field )  
Office Director, )  
 )  
CYNTHIA LAWSON-SWAIN, Warden of )  
Broward Transitional Center, )  
 )  
 )  
IN THEIR OFFICIAL )  
CAPACITIES )  
 )  
Respondents. )  
\_\_\_\_\_ )

Case No.: 0:25-cv-62707-XXXX

PETITION FOR WRIT OF HABEAS  
CORPUS

## INTRODUCTION

1. Petitioner, Kelyn Sanchez Figueroa, is in the physical custody of Respondents at the Broward Transitional Center. He now faces unlawful detention because the Department of Homeland Security (DHS) and the Executive Office of Immigration Review (EOIR) have concluded Petitioner is subject to mandatory detention.
2. Petitioner is charged with, inter alia, having entered the United States without admission or inspection. *See* 8 U.S.C. § 1182(a)(6)(A)(i).
3. Based on this allegation in Petitioner's removal proceedings, DHS denied Petitioner release from immigration custody, consistent with a new DHS policy issued on July 8, 2025, instructing all Immigration and Customs Enforcement (ICE) employees to consider anyone inadmissible under § 1182(a)(6)(A)(i)—i.e., those who entered the United States without admission or inspection—to be subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.
4. Similarly, on September 5, 2025, the Board of Immigration Appeals (BIA or Board) issued a precedent decision, binding on all immigration judges, holding that an immigration judge has no authority to consider bond requests for any person who entered the United States without admission. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The Board determined that such individuals are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.
5. Petitioner's detention on this basis violates the plain language of the Immigration and Nationality Act. Section 1225(b)(2)(A) does not apply to individuals like Petitioner who previously entered and are now residing in the United States. Instead, such individuals are subject to a different statute, § 1226(a), that allows for release on conditional parole or bond. That statute expressly applies to people who, like Petitioner, are charged as inadmissible for having entered the United States without inspection.
6. Respondents' new legal interpretation is plainly contrary to the statutory framework and contrary to decades of agency practice applying § 1226(a) to people like Petitioner.

7. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be released unless Respondents provide a bond hearing under § 1226(a) within seven days.
8. This is a case in which ICE, unlawfully detained the Petitioner who at the time of his arrest, had a valid work authorization, license, and had immigration relief pending in the form of Asylum with the United States Citizenship and Immigration and Services (USCIS).
9. Petitioner, Kelyn Sanchez Figueroa, entered the United States without inspection or detention on or about October 3, 2007 and has been residing in the United States continuously for approximately eighteen (18) year at the time that he was detained by ICE in the interior of the country.
10. Over the years, the courts have stepped in to ensure that vulnerable classes of immigrants receive the protections to which they are entitled as a matter law, due process, and fundamental notions of fairness. *See id; see also, Zadvydas v. Davis*, 533 U.S. 678, 121 S. Ct. 2491 (2001)<sup>1</sup>. The case at bar is an opportunity for this Honorable Court to step in once again in the interest of justice to allow this innocent man to be released to in accordance with the law.

#### **JURISDICTION**

11. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et seq.
12. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).
13. 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).

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<sup>1</sup> Noncitizens seeking asylum are guaranteed Due Process under the Fifth Amendment to the U.S. Constitution. *Reno v. Flores*, 507 U.S. 292, 306 (1993).

**VENUE**

14. Venue is proper in this District under 28 U.S.C. § 1391(e) and 28 U.S.C. § 2241 because a substantial part of the events giving rise to these claims occurred in this district. Petitioner's removal and detention proceedings originated at the Broward Transitional Center at 3900 N. Powerline Rd., Pompano Beach, FL 33073 and proceedings were presided over by both Immigration Judge Stuart Siegel and bond was eventually granted by Immigration Judge Christine Reis. In the event of jurisdictional error, the district court wherein such an application is filed in the exercise of its discretion and in furtherance of justice may transfer the application to the other district court for hearing and determination.

**REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243**

15. The Court must grant the petition for writ of habeas corpus "forthwith" unless the petitioner is not entitled to relief. 28 U.S.C. § 2243.

16. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England, 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).

17. Petitioner is "in custody" within the meaning of 28 U.S.C. § 2241 because he is arrested and detained by Respondents at the Glades County Detention Center in Moore Haven, Florida, pursuant to immigration detention authority. Petitioner challenges that custody as unlawful under the Constitution, federal law, and applicable treaties.

**PARTIES**

18. Petitioner is KELYN SANCHEZ FIGUEROA, a citizen and national of Honduras who entered the United States without inspection on or about the year 2007.

19. Respondent, CYNTHIA LAWSON-SWAIN, in their official capacity as Warden, Broward Transitional Center, has immediate custody over Petitioner and is responsible for his detention.
20. Respondent, JUAN AGUDELO, in their official capacity as the Miami Field Office Director for Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement, is responsible for the custody, detention, and removal of noncitizens within this jurisdiction.
21. TODD LYONS, in their official capacity as Acting Director of the U.S. Department of Homeland Security Immigration and Customs Enforcement at Broward Transitional Center, 3900 N. Powerline Rd., Pompano Beach, FL 33073.
22. Respondent, KRISTI NOEM, in their official capacity as Secretary of the U.S. Department of Homeland Security, is the head of DHS, Broward Transitional Center, 3900 N. Powerline Rd., Pompano Beach, FL 33073, which oversees ICE and is ultimately responsible for the unlawful detention of Petitioner.
23. Respondent, PAM BONDI, in their official capacity as Attorney General of the United States, is charged with the administration and enforcement of the immigration laws and is a proper respondent under 28 U.S.C. § 2243.

#### **STATEMENT OF FACTS**

24. In 2007, the Petitioner, Kelyn Sanchez Figueroa, left Honduras fleeing extreme violence and murders being committed against his family and filed his Asylum with USCIS. *See, Exhibit A*, I-589, Application for Asylum and Withholding of Removal.
25. On October 24, 2025, USCIS forwarded and referred the Respondent's Asylum application to the Immigration Court after the Department of Homeland Security initiated removal proceedings against the Petitioner. *See, Exhibit B*, Notice from USCIS.
26. On September 27, 2025, the Department of Homeland Security served the Respondent a Notice to Appear with four allegations and charging the Petitioner with removability under

section 212 (a)(6)(A)(I) of the Immigration and Nationality Act. *See, Exhibit C*, Notice to Appear.

27. After being in removal proceedings, Petitioner through Counsel, also filed with the Immigration Court his application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents, based on his length of time in the United States and his United States citizen children. *See, Exhibit D*, 42-B Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents.
28. This came after the Petitioner was apprehended by ICE after being pulled over, notwithstanding having his work authorization and driver's license.
29. Petitioner through Counsel, filed a motion for custody redetermination (bond) arguing the Respondent's is a member of the Lazaro Maldonado Bautista class action. *Lazaro Maldonado Bautista et al v. Ernesto SantaCruz Jr et al*, 5:25-cv-01873-BFM Order. *See, Exhibit E*, Class Action Order.
30. On December 19, 2025, Immigration Judge Christine Reis granted the Respondent's motion for custody redetermination, setting a bond in the amount of \$2,000; The Department of Homeland Security reserved appeal. *See, Exhibit F*, Bond Order.
31. On December 19, 2025, the Petitioner paid the bond immediately (*See, Exhibit G*, Proof of Bond Payment), however, DHS filed their notice of appeal and stayed the Respondent's release pending appeal. DHS in their notice of appeal to the Board of Immigration argue that the Immigration Judge erred as a matter of law in granting a bond "where the Respondent is present in the U.S. without admission and therefore is an applicant for admission as defined under Section 235 (b)(2)(A) of the INA, 8 U.S.C. 1225 (b)(2)(A), *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). *See, Exhibit H*, DHS'S Appeal and Stay Filing.
32. As of the filing of the instant petition, petitioner has been detained for over three (3) months in ICE custody.

### EXHAUSTION

33. Petitioner remains detained after the Department appealed the Immigration Judge's order, granting the Petitioner bond; Petitioner remains detained pending appeal based on DHS filing of stay pending appeal, arguing the Respondent is subject to mandatory detention. Exhaustion under 28 U.S.C. § 2241 is prudential, not jurisdictional, and other courts have repeatedly excused it where administrative review is inadequate, futile, or would cause irreparable harm. *F.-G. v. Noem*, No. 25-CV-0243-CVE-MTS, 2025 U.S. Dist. LEXIS 111539 (N.D. Okla. June 12, 2025) (declining to require exhaustion where immigration detainee was "trapped in prolonged detention without a meaningful opportunity for bond"); *Quintana Casillas v. Sessions*, No. 17-cv-01395, slip op. at 9–11 (D. Colo. 2018) (explaining that when "the question presented is purely legal and has been repeatedly mishandled administratively, exhaustion serves no useful purpose."). Here, the appellate body is the Board of Immigration Appeals, the same body that issued the decision stripping immigration judges of their jurisdiction to hear bonds.
34. Other districts have held that habeas corpus relief was available despite a pending BIA appeal, because "[e]ach additional day of detention without a bond hearing constitutes irreparable harm that cannot be remedied after the fact" *LG v. Choate*, No. 23-cv00611, slip op. at 14 (D.N.M. 2024)
35. The BIA appeal process here exemplifies why exhaustion is unnecessary. As *Rodriguez v. Bostock* explained, while the BIA has occasionally remanded bond denials where immigration judges misapplied § 1225(b), it has declined to issue a precedential ruling. 779 F. Supp. 3d 1239, 1245 (W.D. Wash. 2025).
36. Consequently, many immigration judges continue to deny bond altogether, and appeals typically take six months or more, during which noncitizens remain detained unlawfully, with severe consequences for their health, families, and ability to defend against removal. *Id.*
37. Because Petitioner's injury is the very fact of unlawful detention, administrative remedies are neither timely nor effective. Habeas corpus is the only adequate remedy.

## LEGAL FRAMEWORK

### **U.S. District Court has entered a final Judgment on a proposed class**

38. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.
39. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an IJ. *See* 8 U.S.C. 1229a. Individuals in §1226(a) detention are generally entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, *See* 8 U.S.C. § 1226(c).
40. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under § 1225(b)(2).
41. Last, the INA also provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)-(b).
42. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).
43. 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, 582 to 3009-583, 3009-585. Section 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).
44. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered 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. 10312, 10323 (Mar. 6, 1997).
45. Thus, in the decades that followed, most people who entered without inspection and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). 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)).
46. 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, **Exhibit I**, ICE Policy Memo.
  47. The new policy, entitled “Interim Guidance Regarding Detention Authority for Applicants for Admission,” claims that all persons who entered the United States without inspection shall now be subject to mandatory detention provision 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 decades.
  48. On September 5, 2025, the BIA adopted this same position in a published decision, *Matter of Yajure Hurtado*. There, the Board held that all noncitizens who entered the United States without admission or parole are subject to detention under § 1225(b)(2)(A) and are ineligible for IJ bond hearings.
  49. Since Respondents adopted their new policies, dozens of federal courts have rejected their new interpretation of the INA’s detention authorities. Courts have likewise rejected *Matter of Yajure Hurtado*, which adopts the same reading of the statute as ICE.
  50. Even before ICE or the BIA introduced these nationwide policies, IJs in the Tacoma, Washington, immigration courts stopped providing bond hearings for persons who entered the United States without inspection and who have since resided here. There, the U.S. District Court in the Western District of Washington found that such a reading of the INA is likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025).
  51. Subsequently, court after court has adopted the same reading of the INA’s detention authorities and rejected ICE and EOIR’s new interpretation. See, e.g., *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), report and recommendation adopted, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV.

5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d ----, 2025 WL 2466670 (D. Minn. Aug. 27, 2025) *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); see also, e.g., *Palma Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at \*2 (D. Neb. Sept. 3, 2025) (noting that “[t]he Court tends to agree” that § 1226(a) and not § 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 at \*3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-RCC, 2025 WL 2374224 at \*2 (D. Neb. Aug. 14, 2025) (same).

52. Courts have uniformly rejected DHS’s and EOIR’s new interpretation because it defies the INA. As the *Rodriguez Vazquez* court and others have explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.
53. 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].”
54. 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 Vazquez* court explained, “[w]hen

Congress creates ‘specific exceptions’ to a statute’s applicability, it ‘proves’ that absent those exceptions, the statute generally applies.” 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)); see also *Gomes*, 2025 WL 1869299, at \*7.

55. 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.
56. 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). Indeed, the Supreme Court has explained 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.” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).
57. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like Petitioner, who have already entered and were residing in the United States at the time they were apprehended.
58. On November 25, 2025 in *Bautista v. Santacruz*, No. 5:25-cv01873-SSS-BFM, Order Granting Plaintiff Petitioners' Motion for Class Certification (C.D. Cal. Nov. 25, 2025). The Court held that the Bond Eligible Class consists of "all noncitizens in the United States without lawful status who: (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination." *See id.*
59. Thereafter, on December 18, 2025, the District Court entered a final judgment in the *Bautista* Class Certification. The District Court found and reasons that the “because of the change in procedural posture, the Court found that the previous reasons supporting delay in entry of final judgment, no longer exists. Furthermore, because new facts indicate Respondents have counseled the noncompliance with the Court’s orders, evidence of these circumstances present exigent circumstances that may cause irreparable harm to those

detained without a bond hearing.” See, **Exhibit J**, Final Judgment, *Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM.

60. In its decision the Court further found that the BIA holding in *Yajure Hurtado* is “no longer controlling; the legal conclusion underlying the decision in *Hurtado* is no longer tenable as the District Court found that those similarly situated are not applicants for admission,” and therefore are not subject to mandatory detention under §1224. *Id* at 6.
61. As a noncitizen who meets all of the class membership requirements, Petitioner is a *Bautista* class member and therefore entitled to a bond redetermination hearing.

### **Mandatory Detention Scheme**

62. Congress established two separate detention regimes. Section 1225 governs “applicants for admission” encountered at the border or its functional equivalent, while § 1226 governs individuals “already in the country.” *Jennings v. Rodriguez*, 583 U.S. 281, 288–89 (2018). These provisions are mutually exclusive: “[A] noncitizen cannot be subject to both mandatory detention under § 1225 and discretionary detention under § 1226.” *Martinez v. Hyde*, No. 25-cv-11613, 2025 WL 2084238, at \*8 (D. Mass. July 24, 2025).
63. 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.”
64. Detention under § 1225(b) is therefore mandatory and individuals detained following examination under section 1225 can only be paroled into the United States “for urgent humanitarian reasons or significant public benefit.” *Jennings*, 583 U.S. at 300, 138 S.Ct. 830 (quoting 8 U.S.C. § 1182(d)(5)(A)). This parole “into the United States” allows physical entry but reserves the Government’s ability to treat the person as if “stopped at the border.” *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 139 (2020).
65. Crucially, courts and the BIA have recognized that the phrase “seeking admission” carries an active, temporal component: it refers to individuals “coming or attempting to

come into the United States,” 8 C.F.R. § 1.2, i.e., those apprehended at or near the border and in the process of initial entry. *Martinez*, 2025 WL 2084238, at \*6–7.

66. By contrast, § 1226 governs detention of noncitizens already present in the United States and apprehended on a warrant issued by the Attorney General. 8 U.S.C. § 1226(a). Unlike § 1225’s mandatory scheme, § 1226(a) creates a discretionary framework, under which the Attorney General “may continue to detain,” or “may release” a noncitizen on bond or conditional parole. *Id.*
67. Individuals detained under § 1226 are entitled to an individualized custody determination and may appeal that determination to an immigration judge. 8 C.F.R. § 1236.1(d)(1); *see Matter of Siniauskas*, 27 I. & N. Dec. 207, 207 (BIA 2018).
68. Some narrow mandatory detention categories exist under § 1226(c) for certain criminal or security grounds, but those are not implicated here.
69. A contrary reading renders superfluous recent amendments in the *Laken Riley Act*, Pub. L. No. 119-1, 139 Stat. 3 (2025), which added INA § 236(c)(1)(E) mandating detention for noncitizens inadmissible under § 212(a)(6)(A)(present without admission) who are implicated in enumerated crimes. If all such noncitizens were already mandatorily detained under § 235(b)(2)(A), Congress’s addition would be meaningless. *See Corley v. United States*, 556 U.S. 303, 314 (2009) (statutes must be construed to give effect to all provisions).
70. Multiple recent decisions confirm that § 1225 does not apply to long-resident noncitizens apprehended in the interior. *See Carlos Javier Lopez Benitez v. Francis*, No. 25-cv-11517, 2025 WL 1869299, at \*5–8 (D. Mass. July 7, 2025)(holding that § 1225(b)(2)(A) did not apply to a petitioner who had been residing in the United States for over two years; emphasizing that “seeking admission” requires an active, ongoing effort to enter, not mere presence in the country, and concluding that detention was governed by § 1226(a) with access to bond); *see also Rodriguez v. Bostock*, F. Supp. 3d, 2025 WL 1193850, at \*12–16 (W.D. Wash. Apr. 24, 2025) (finding that a non-citizen apprehended from within the United States and charged with inadmissibility was necessarily detained

under section 1226, rather than section 1225); *Gomes*, 2025 WL 1869299 at \*5–8 (same); *Lepe v. Andrews*, No. 1:25-cv-01163-KES-SKO (HC), 2025 U.S. Dist. LEXIS 187233, at \*13 (E.D. Cal. Sep. 23, 2025).

71. As those courts recognized, interpreting § 1225 to cover all noncitizens who were never formally “admitted” would collapse the statutory distinction, render § 1226 superfluous, and contradict longstanding DHS practice. *See Martinez*, 2025 WL 2084238, at \*8 (“This tension between sections 1225 and 1226 motivates the conclusion that they apply to different classes of aliens”); *Gomes v. Hyde*, 2025 WL 1869299, at \*5–8 (D. Mass. July 7, 2025); *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 386, 133 S.Ct. 1166, 185 L.Ed.2d 242 (2013).

72. Courts have distilled two central principles:

- a. Geographic/temporal limits: § 1225 applies only to noncitizens apprehended at or near the border and in the act of entry (*see Thuraissigiam*, 591 U.S. 103, 114, 139 (2020)), not to those apprehended years later in the interior.
- b. Statutory structure: Reading § 1225 as covering all noncitizens who were never lawfully “admitted” would render § 1226 largely meaningless, contrary to the rule against surplusage. *See Martinez*, 2025 WL 2084238, at \*7; *Gomes v. Hyde*, No. 25-cv-11571, 2025 WL 1869299, at \*6–8 (D. Mass. July 7, 2025).

73. As set forth below, applying this framework compels the conclusion that Petitioner’s detention cannot fall under § 1225. Having resided in the United States for four years before detention within the interior, he falls squarely within the discretionary scheme of § 1226. Respondents’ reliance on § 1225 is therefore legally untenable.

74. Finally, *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024) is a landmark decision overruling *Chevron* deference thereby permitting this Honorable Court to come to its own conclusion on the interpretation of the relevant statutes without relying on Board precedent in *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025), which was wrongly decided.

**CLAIMS FOR RELIEF**

**COUNT ONE**

**Violation of Due Process**

75. Petitioner re-alleges the allegations contained in all preceding paragraphs of this Petition-Complaint as if fully set forth herein.
76. 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).
77. Petitioner has a fundamental interest in liberty and being free from official restraint.

**COUNT TWO**

**Violation of the Due Process Clause of the Fifth Amendment to the United States Constitution (Procedural Due Process); 5 U.S.C. §§ 702, 706**

78. Petitioner re-alleges the allegations contained in all preceding paragraphs of this Petition-Complaint as if fully set forth herein.
79. The Due Process Clause of the Fifth Amendment protects all “person[s]” from deprivation of liberty “without due process of law.”
80. The Due Process Clause entitles Petitioner to meaningful process assessing whether his current detention is justified. The arrest and detention of Petitioner without an opportunity for him to contest his detention in front of a neutral decision-maker after he had been living and working in the United States for over four years provide insufficient due process and violates the Due Process Clause of the Fifth Amendment of the Constitution.
81. There have been no changes to the facts that justify this change in custody requiring Jose to await an unknown date when he will be scheduled for an asylum interview.

**COUNT THREE**

**UNLAWFUL DETENTION UNDER 8 U.S.C. § 1225; CUSTODY PROPERLY GOVERNED BY 8 U.S.C. § 1226 (Misapplication of Mandatory Detention Statute)**

82. Petitioner is currently being detained after the Immigration Judge granted bond but pending appeal filed by the Department under 8 U.S.C. § 1225(b)(2)(A), based on DHS's argument that he is "an Applicant seeking Admission under the provisions of Sec. 235(b)(2)(A) of the Immigration and Nationality Act ('INA')." .
83. This argument is legally erroneous. Section 1225 applies to noncitizens actively "seeking admission" at the border or its immediate functional equivalent. By contrast, § 1226 governs the arrest and detention of those "already in the country" pursuant to a warrant issued by the Attorney General. The two provisions are mutually exclusive. *See Jennings v. Rodriguez*, 583 U.S. 281, 288–89 (2018); *Matter of M-S-*, 27 I. & N. Dec. 509, 516 (A.G. 2019).
84. Petitioner plainly falls within § 1226. He has resided in the United States for over eighteen (18) years, with deep community ties, employment, and no significant criminal record. He was stopped by the Palm Beach County Highway patrol hundreds of miles from any border or port of entry—detained by ICE and transferred to the Broward Transitional Center, where DHS issued a notice to appear.
85. The charging document itself expressly alleges that Petitioner is "present in the United States without admission or parole," language that presumes residence in the interior and confirms that he was not in the process of seeking admission. Taken together, these contradictions underscore the arbitrariness of Petitioner's detention and the government's mischaracterization of his case.
86. To hold otherwise would effectively erase the statutory line between §§ 1225 and 1226, converting virtually all noncitizens present without admission into mandatory detainees and rendering § 1226(a) a dead letter. Courts have consistently rejected this outcome. *See Martinez*, 2025 WL 2084238, at \*7 (rejecting interpretation that would "nullify" Congress's amendment to § 1226(c)); *Gomes v. Hyde*, No. 25-cv-11571, 2025 WL 1869299, at \*7 (D. Mass. July 7, 2025) (noting that §§ 1225 and 1226 "apply to different classes" of noncitizens).

87. In sum, Petitioner was not “seeking admission” within the meaning of § 1225(b) but was “already in the country” within the meaning of Jennings, 583 U.S. at 288–89. Her custody is governed by § 1226(a), under which detention is discretionary and subject to individualized bond hearings. DHS’s argument is contrary to law, unsupported by the record, and must be set aside.

### **PRAYER FOR RELIEF**

**WHEREFORE**, Petitioner respectfully requests this Court to grant the following:

- (1) Assume jurisdiction over this matter;
- (2) Order that Petitioner shall not be transferred outside the Southern District of Florida;
- (3) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days.
- (4) Declare that the Petitioner’s detention violates the Due Process Clause of the Fifth Amendment.
- (5) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately.
- (6) Grant any further relief this Court deems just and proper.

*/s/ Jan Peter Weiss*

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the **Petition for Writ of Habeas Corpus with Attachments and Summons** was served by **certified mail** to **PAMELA BONDI, Attorney General of the United States, U.S. Department of Justice, 950 Pennsylvania avenue, NW, Washington, DC 20530-0001.**

I hereby certify that a true and correct copy of the **Petition for Writ of Habeas Corpus with Attachments and Summons** was served by **certified mail** to **JUAN AGUDELO, Acting Miami Field Office Director, 865 SW 78th Avenue, Suite 101, Plantation, FL 33324.**

I hereby certify that a true and correct copy of the **Petition for Writ of Habeas Corpus with Attachments and Summons** was served by **certified mail** to **KRISTI NOEM, Secretary of Homeland Security, U.S. Department of Homeland Security, 245 Murray Lane, SW, Mail Stop 0485, Washington, DC 20528-0485.**

I hereby certify that a true and correct copy of the **Petition for Writ of Habeas Corpus with Attachments and Summons** was served by **certified mail** to **TODD LYONS, Acting Director U.S. Immigration and Customs, Office of the Principal Legal Advisor, U.S. Immigration and Customs Enforcement, 500 12th Street SW, Washington, DC 20536.**

I hereby certify that a true and correct copy of the **Petition for Writ of Habeas Corpus with Attachments and Summons** was served by **certified mail** to **CYNTHIA LAWSON-SWAIN, Warden of Broward Transitional Center, 3900 N. Powerline Road, Pompano Beach, FL 33073.**