UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

CIVIL ACTION No. 5:25-cv-01930

Jerixon Nomar CAMPOS CASTRO, Keydi Lilly BERMUDEZ URBINA, and J. I. C.B., Petitioners, v. **WARDEN**, Dilley Immigration Processing Center; **MIGUEL VERGARA**, Field Office Director, San Antonio Field Office, United States Immigration and Customs Enforcement; **TODD M. LYONS**, Acting Director, United States Immigration and Customs Enforcement; **KRISTI NOEM**, Secretary of United States Department of Homeland Security; and **PAMELA BONDI,** United States Attorney General, *in their official capacities*,	**PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241**

PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

INTRODUCTION

1. This case challenges Respondents' unlawful re-detention of Petitioners Jerixon Nomar Campos Castro (Mr. Campos), Keydi Lilly Bermudez Urbina (Ms. Bermudez), and J.I.C.B (jointly

referred to as Petitioners). All three Petitioners are currently in the physical custody of Respondents at the Dilley Immigration Processing Center, located at 300 El Rancho Way, Dilley, Texas, 78017.

2. All three Petitioners were apprehended shortly after entering the United States and thereafter released from immigration custody for the purpose of continuing their removal proceedings. In the subsequent years since their release, Petitioners fulfilled their conditions of release, reunited with family members residing in the community, attended removal proceedings, received employment authorization, and built lives in the Unites States. None have criminal records in the United States or any other country.

3. Despite Petitioners' compliance while released, including attending their court hearings in their removal proceedings, each was abruptly and unlawfully re-detained by the Department of Homeland Security (DHS) on December 4, 2025.

4. Prior to re-detaining Petitioners, Respondents did not provide any written notice explaining the basis for the revocation of their releases. Likewise, Respondents did not assess whether Petitioners presented a flight risk or danger to the community prior to their re-arrests. Nor did Respondents provide a hearing before a neutral decisionmaker, where ICE was required to justify the basis for re-detention or to explain why each Petitioner is now a flight risk or danger to the community.

5. 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. Section 1225(b)(2)(A) and therefore ineligible to be released on bond. *Id.*

6. Respondents detention of Petitioners' violates the plain language of the Immigration and

Nationality Act (INA). Section 1225(b)(2)(A) applies only to people who are both an "applicant for admission" and "seeking admission" to the United States. It does not apply to people who, like Petitioners, previously entered the country and are now living in the United States. Detention of such individuals is governed by a different statute, Section 1226(a), which allows for release on conditional parole or bond. That statute expressly applies to people who are, like Petitioners, "already present in the United States" and are charged as inadmissible for having entered without inspection. *See Jennings v. Rodriguez*, 583 U.S. 281, 303 (2018); 8 U.S.C. §1226(a).

7. Respondents' novel interpretation of the INA is plainly contrary to the statutory framework of the INA and decades of agency practice applying section 1226(a) to people like Petitioners.

8. Therefore, Petitioners seek a writ of habeas corpus requiring that they be released unless Respondents provide a bond hearing under section 1226(a) within seven days.

9. Accordingly, to vindicate Petitioners' rights, this Court should grant this petition for a writ of habeas corpus.

PARTIES

10. Petitioner Jerixon Nomar Campos Castro is an adult citizen of Nicaragua. He is detained at the Dilley Immigration Processing Center

11. Petitioner Keydi Lilly Bermudez Urbina is an adult citizen of Nicaragua. She is detained at Dilley Immigration Processing Center.

12. Petitioner J.I.C.B. is a six-year-old citizen of Nicaragua. He is detained at the Dilley Immigration Processing Center.

13. Respondent is the Warden for the Dilley Immigration Processing Center. He is the legal and physical custodian of Petitioners and is named in his official capacity. His address is 300 El Rancho Way, Dilley, TX 78017

14. Respondent Miguel Vergara is the Field Office Director of the San Antonio Field Office of

ICE, which has administrative jurisdiction over Petitioners' case. He is a legal custodian of Petitioners and is named in his official capacity. His address is 1777 NE Loop 410, Floor 15, San Antonio, TX 78217.

15. Respondent Todd Lyons is the Acting Director of ICE. He is a legal custodian of Petitioners' and is named in his official capacity. His address is U.S. Immigration and Customs Enforcement, Office of the Principal Legal Advisor, 500 12th St. SW, Mailstop 5900, Washington, D.C. 20536.

16. Respondent Kristi Noem is the Secretary of DHS. She is a legal custodian of Petitioners' and is named in her official capacity. Her address is Office of the General Counsel, MS 0485 Department of Homeland Security, 2707 Martin Luther King, Jr. Ave. SE, Washington, D.C. 20528-0525.

17. Respondent Pamela Bondi is the Attorney General of the United States Department of Justice (DOJ). She is a legal custodian of Petitioners' and is named in her official capacity. Her address is U.S. Department of Justice, 950 Pennsylvania Avenue, NW, Washington, D.C. 20530-0001.

JURISDICTION AND VENUE

18. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

19. 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.

20. Venue is proper in the United States District Court for the Western District of Texas because at least one Respondent is in this District, Petitioners are detained in this District, and their immediate physical custodian is in this District. *See* 28 U.S.C. § 1391(b).

REQUIREMENTS OF 28 U.S.C. § 2243

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

22. 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).

EXHAUSTION NOT REQUIRED

23. Exhaustion is not required where a claimant raises a constitutional claim that the agency would reject. *Gallegos-Hernandez v. United States*, 688 F.3d 190, 194 (5th Cir. 2012)

24. No statutory exhaustion requirement applies to a petition challenging immigration detention under 28 U.S.C. § 2241. *See, e.g.*, *Montano v. Texas*, 867 F.3d 540, 542 (5th Cir. 2017) ("Unlike 28 U.S.C. § 2254, Section 2241's text does not require exhaustion."); *Robinson v. Wade*, 686 F.2d 298, 303 n.8 (5th Cir. 1982) ("[S]ection 2241 contains no statutory requirement of exhaustion like that found in section 2254(b)"); *Garza-Garcia v. Moore*, 539 F. Supp. 2d 899, 904 (S.D. Tex. 2007) ("Under the INA exhaustion of administrative remedies is only required by Congress for appeals on final orders of removal.").

UNLAWFUL RE-DETENTION AFTER A PRIOR § 236 DETERMINATION

25. ICE's prior decision to release Petitioner's on their own recognizance under 8 U.S.C. Section 1226(a) was, by definition, a government determination that they posed no danger to the community and no flight risk. *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), aff'd, 905 F.3d 1137 (9th Cir. 2018). That initial release created a protected liberty interest—long recognized in analogous criminal contexts—as well as an "implied promise" that Petitioners would

not be re-detained absent a violation of their conditions of release. *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973). Yet more than four years later, and without any allegations of noncompliance, new criminal conduct, or changed circumstances, ICE abruptly altered their detention scheme and placed them back into custody. Such an unexplained reversal is arbitrary, procedurally defective, and constitutionally impermissible as it disregards the agency's prior risk determination and deprives Petitioners of their liberty interest without notice, reasoned justification, or the minimal due process required before revoking a previously granted release.

FACTUAL BACKGROUND

26. Petitioner Jerixon Nomar Campos Castro is a twenty-seven-year-old male and native and citizen of Nicaragua. *See attached,* Exhibit 1: Petitioner Campos Work Permit.

27. Petitioner Keydi Lilly Bermudez Urbina is a twenty-five-year-old female and a native and citizen of Nicaragua. *See attached,* Exhibit 2: Petitioner Bermudez Work Permit

28. J.I.C.B. is a six-year-old male and a native and citizen of Nicaragua. *See attached*, Exhibit 3: Petitioner J.I.C.B. Work Permit.

29. Petitioners fled Nicaragua and came to the United States to seek asylum in 2021. They presented themselves at the southern border and were apprehended by DHS and placed in removal proceedings before the San Antonio Immigration Court pursuant to 8 U.S.C. § 1229(a).

30. Petitioners were subsequently released on their own recognizance pursuant to 8 U.S.C. Section 1226(a), reflecting DHS's determination that they posed no danger to the community and no flight risk. Courts have long recognized that such a release creates a protected liberty interest and an "implied promise" that the individual will not be re-detained absent a violation of release conditions or a material change in circumstances. *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), aff'd, 905 F.3d 1137 (9th Cir. 2018); *Morrissey v. Brewer*, 408 U.S. 471, 482

(1972); *Gagnon v. Scarpelli,*411 U.S. 778, 782 (1973).

31. Petitioners have developed substantial ties to the United States during their period of residence 2021. They have embraced the culture and values of this country and have been active and contributing members of their community.

32. Petitioners filed their asylum application with the Executive Office for Immigration Review (EOIR). They had an individual hearing set for 2027. The application remains pending and unresolved.

33. Petitioners have no criminal history whatsoever and pose no risk to the community. Nothing in their background indicates that they are a danger to the United States or that their detention is necessary for public safety.

34. On or about December 4, 2025, Petitioners were arrested while attending their scheduled ICE check-in. Without warning or explanation, they were taken into ICE custody and are currently detained at the Dilley Immigration Process Center, located at 300 El Rancho Way, Dilley, Texas 78017.

35. Petitioners' abrupt re-detention—after several years of full compliance with all ICE check-ins and immigration requirements—lacks any valid procedural or substantive justification. The government has identified no violation of conditions, new derogatory information, or changed circumstances that would justify revoking the liberty previously granted under 8 U.S.C. Section 1226(a). Such a sudden reversal is arbitrary, procedurally defective and constitutionally impermissible, as it disregards DHS's original risk assessment and Petitioners' reliance on their prior release to build a stable life and prepare their asylum case. Their continued confinement impairs their ability to prepare their claim, consult with counsel, and support their family. These harms are immediate, concrete, and irreparable.

36. If not enjoined, Petitioners' face months or even years of prolonged detention despite their

strong equities, pending asylum claim, documented compliance history, and the absence of any risk factors. Such ongoing custody violates their constitutional rights and undermines the procedural protections afforded under federal law.

37. Petitioners respectfully seek this Court's emergency intervention to restore their liberty and prevent further irreparable harm while their underlying immigration proceedings continue.

38. The government has failed to provide any meaningful justification for their sudden arrest or continued detention. Given the absence of individualized findings supporting custody, the arbitrary revocation of their prior release, and the grave and immediate harms at stake, Petitioners now submit this Emergency Petition for Writ of Habeas Corpus and Motion for Temporary Restraining Order and respectfully requests that this Honorable Court order their immediate release.

LEGAL FRAMEWORK

A. Due Process Principles

39. Due process requires that if DHS seeks to re-arrest people like Petitioners—who were released and given upcoming court dates, have lived in the United States without incident after their initial release, and have otherwise complied with the terms of their release—the government must afford a hearing before a neutral decisionmaker to determine whether any re-detention is justified because the person is a flight risk or a danger to the community.

40. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty protected by the Due Process Clause." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001)

41. Consistent with this principle, individuals released on parole or other forms of conditional release have a liberty interest in their "continued liberty." *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972).

42. Such liberty is protected by the Fifth Amendment because, "although indeterminate, [it]

includes many of the core values of unqualified liberty," such as the ability to be gainfully employed and live with family, "and its termination inflicts a 'grievous loss' on the [released individual] and often on others." *Id.*

43. To protect against arbitrary re-detention and to ensure the right to liberty, due process requires "adequate procedural protections" that test whether the government's asserted justification for a noncitizen's physical confinement "outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690 (citation modified).

44. Due process thus guarantees notice and an individualized hearing before a neutral decisionmaker to assess danger or flight risk before the revocation of an individual's release. *Goldberg v. Kelly*, 397 U.S. 254, 267 (1970) ("The fundamental requisite of due process of law is the opportunity to be heard . . . . at a meaningful time in a meaningful manner." (citation modified)); *see also, e.g., Morrissey*, 408 U.S. at 485 (requiring "preliminary hearing to determine whether there is probable cause or reasonable ground to believe that the arrested parolee has committed . . . a violation of parole conditions" and that such determination be made "by someone not directly involved in the case" (citation modified))

45. Three provisions of the INA govern the detention of the majority of noncitizens in removal proceedings.

46. First, 8 U.S.C. Section 1226 authorizes the detention of noncitizens in standard removal proceedings. *See* 8 U.S.C. § 1229a. People subject to detention under section 1226 are generally entitled to a bond hearing, unless they have been arrested for, charged with, or convicted of certain crimes. *See* 8 C.F.R. Sections 1003.19(a), 1236.1(d)8 U.S.C. § 1226(c); *See Jennings*, 583 U.S. at 288.

47. Second, 8 U.S.C. Section 1225 governs detention of noncitizens subject to expedited

removal under section 1225(b)(1)[1] and detention of other recent arrivals who are both "applicant[s] for admission" and "seeking admission" under section 1225(b)(2)(A). 8 U.S.C. § 1225(a)(3), (b)(2)(A). People detained under section 1225(b)(2)(A) are subject to mandatory detention.

48. Third, 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).

49. This case concerns the detention provisions at sections 1226(a) and 1225(b)(2).

50. Sections 1226 and 1225(b) were enacted in 1996 as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, 110 Stat. 3009-546 (1996). Congress amended section 1226 in early 2025 through the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).

51. Before the IIRIRA, most people detained within the United States—even those who entered without inspection—were entitled to a custody hearing, while people apprehended at the border were only eligible for release on parole. *See* 8 U.S.C. § 1252(a) (1994). When it enacted IIRIRA, Congress explained that section 1226(a) "restates the current provisions in section [1252(a)] regarding the authority of the Attorney General to arrest, detain, and release on bond an alien who is not lawfully in the United States." H.R. Rep. No. 104-469, pt. 1, at 229 (1996).

52. When EOIR issued regulations implementing IIRIRA in 1997, it explained that "[D]espite being applicants for admission, aliens who are present without having been admitted or paroled. . . will be eligible for bond and bond redetermination." 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).

53. Thus, the long-standing agency interpretation of the INA was that section 1225 governed

[1] A summary removal process used at the discretion of DHS officials who encounter non-citizens at or near the border within two years of their entrance into the United States.

detention of noncitizens at or near the border, while section 1226 governs "detention of those who are already present in the United States." *Lopez Santos v. Noem*, No. 3:25-CV-01193, 2025 WL 2642278, at *4 (W.D. La. Sept. 11, 2025) (citing *Jennings*, 583 U.S. at 303). For decades, noncitizens apprehended while already present in the United States were generally entitled to a bond hearing, unless their criminal history rendered them ineligible under section 1226(c).

54. In recent months, Respondents have adopted a novel interpretation of section 1225(b)(2)(A). On July 8, 2025, ICE "in coordination with" the DOJ, announced a new policy claiming that any noncitizen who ever entered without inspection is subject to mandatory detention under section 1225(b)(2)(A), regardless of when they entered, when they are apprehended, and how their ongoing detention may impact them and their families.

55. On September 5, 2025, the BIA parroted this novel interpretation in a published decision, *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). There, the BIA held that all noncitizens who are present in the United States without admission are subject to mandatory detention under section 1225(b)(2)(A) and are ineligible for bond hearings. *Yajure Hurtado*, 29 I&N at 216.

56. Specifically, the BIA argued that "under the plain reading of the INA," noncitizens "who are present in the United States without admission are applicants for admission as defined under" section 1225(b)(2)(A). *Id.* at 220.

57. Federal courts do not owe deference to agency interpretation of statutes. Rather, they exercise "independent legal judgment" to interpret statutes. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 401 (2024). Thus, while an IJ may be bound by the BIA's interpretation in *Matter of Yajure Hurtado*, this Court is not. See *Pizarro Reyes*, 2025 WL 2609425, at *6 (citing Lop*er Bright*, 603 U.S. at 413).

58. Over the past few months, dozens of federal courts, including those in the Fifth Circuit, have rejected Respondents' interpretation of section 1225. *See, e.g., Gomes v. Hyde*, No. 1:25-CV-

11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Rivera Zumba v. Bondi*, No. 25-CV-14626 (KSH), 2025 WL 2753496 (D.N.J. Sept. 26, 2025); *Leal-Hernandez v. Noem*, No.1:25-CV-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. CV 3:25-1093, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Lopez Santos*, 2025 WL 2642278; *Pizarro Reyes* 2025 WL 2609425; *Campos Leon v. Forestal*, No. 1:25-CV-01774-SEB-MJD, 2025 WL 2694763 (S.D. Ind. Sept. 22, 2025); *Barrajas v. Noem*, No. 4:25-CV-00322-SHLHCA, 2025 WL 2717650 (S.D. Iowa Sept. 23, 2025); *Belsai D.S. v. Bondi*, No. 25-CV-3682 (KMM/EMB), 2025 WL 2802947 (D. Minn. Oct. 1, 2025); *Giron Reyes v. Lyons*, No. C25-4048-LTS-MAR, 2025 WL 2712427 (N.D. Iowa Sept. 23, 2025); *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025); *Salazar v. Dedos*, No. 1:25-CV-00835-DHU-JMR, 2025 WL 2676729 (D.N.M. Sept. 17, 2025); *Lopez v. Hardin*, No. 2:25-CV-830-KCD-NPM, 2025 WL 2732717 (M.D. Fla. Sept. 25, 2025).

59. Courts have uniformly rejected DHS and EOIR's new interpretation because it is contrary to the INA. As the *Lopez Santos* court and others have explained, the plain text of the two provisions demonstrates that section 1226(a), not section 1225(b)(2)(A), applies to people like Petitioners. *See* 2025 WL 2642278, at *4.

60. Section 1225(b) "applies primarily to aliens seeking entry into the United States," while section 1226 "applies to aliens already present in the United States." *Jennings*, 583 U.S. at 297, 303; *see also Lopez Santos*, 2025 WL 2642278, at *4 (explaining that both statutes are necessary because they "differentiat[e] between the detention of arriving aliens who are seeking entry into the United States under § 1225 and the detention of those who are already present in the United States under § 1226."). Indeed, "'our immigration laws have long made a distinction between those [noncitizens] who have come to our shores seeking admission . . . and those who are within the United States after an entry, irrespective of its legality.'" *Martinez v. Hyde*, No. CV 25-11613-

BEM, 2025 WL 2084238, at *8 (D. Mass. July 24, 2025) (quoting *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958)).

61. Section 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." 8 U.S.C. § 1226(a). These removal hearings are held under section 1229a, to "decid[e] the inadmissibility or deportability of a[] [noncitizen]." 8 U.S.C. § 1229a(a)(1).

62. The text of section 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) states that people who are "inadmissible under paragraph (6)(A) . . . section 1182(a)"—noncitizens who have previously entered without inspection—and are charged with, arrested for, or convicted of certain crimes must be detained. *Id.* The explicit reference to such people in a specific exception makes clear that, by default, such people are afforded a bond hearing under section 1226(a). "When 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 (quoting *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins.Co.*, 559 U.S. 393, 400 (2010)). Therefore, noncitizens like Petitioners, who are present in the United States and charged as inadmissible because they entered without inspection, are subject to detention under section 1226.

63. Meanwhile, section 1225(b) applies to people arriving at ports of entry or those who very recently entered the United States. The section's title refers to "Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing." 8 U.S.C. § 1225. As several courts have noted, "[t]he added word of 'arriving' indicates that the statute governs 'arriving' noncitizens, not those present already." *Barrera v. Tindall*, No. 3:25-CV-541-RGJ, 2025 WL 2690565, at *4 (W.D. Ky. Sept. 19, 2025) (citing *Pizarro Reyes*, 2025 WL 2609425, at *5).

64. Furthermore, the text of section 1225 repeatedly refers to inspections, a term generally

understood to refer to determinations of admissibility at time of entry. *See* Brief for American Immigration Lawyers Association and Capital Area Immigrants' Rights Coalition as Amici Curiae Supporting Plaintiffs' Motion for Preliminary Injunction, *Farmworker Ass'n of Fla. v. DeSantis*, 23-cv-226655-RKA, 716 F.Supp.3d 1312 (S.D. Fla. filed Aug. 25, 2023). The use of inspection indicates that the statute is concerned with people who have recently arrived in the United States.

65. The use of the present participle in section 1225 further demonstrates that its applicability does not extend to people already present in the United States. *See United States v. Wilson*, 503 U.S. 329, 333 (1992) ("Congress' use of verb tense is significant in construing statutes."). The present participle "denotes an ongoing process" that "necessarily implies some sort of present tense action." *Martinez*, 2025 WL 2084238, at *6 (citations and internal quotations omitted) (concluding that noncitizen was not subject to detention under section 1225(b)(2)(A) because they were not seeking admission).

66. Section 1225(b)(2)(A) applies to noncitizens "seeking admission." The use of present participle in the phrase "seeking admission" implies a "present-tense action" and does not apply to a person who has been living in the country for several years. *Martinez*, 2025 WL 2084238, at *6; *Lopez Benitez*, 2025 WL 2371588 at *7 ("[S]omeone who enters a movie theater without purchasing a ticket and then proceeds to sit through the first few minutes of a film would not ordinarily then be described as 'seeking admission' to the theater.").

67. The regulations enacting section 1225(b)(2) similarly use the present participle to refer to "arriving aliens". 8 C.F.R. § 235.2(c). These regulations define "arriving alien" as "an applicant for admission coming or attempting to come into the United States at a port-of-entry." 8 C.F.R. § 1.2. A person who has been living in the United States for decades is plainly not "coming or attempting to come into the United States." *Id.*

68. Accordingly, the mandatory detention provision of section 1225(b)(2)(A) does not apply to

people like Petitioners who have already entered and were released under section 1226(a) and were residing in the United States when they were re-detained.

69. Once a determination to release an individual from custody is made, the release order may be revisited when the facts or circumstances warrant revocation or reconsideration. 8 U.S.C. § 1226(b). For an individual who was once in custody, the United States Attorney General may take that individual back into custody by revoking the individual's release when the facts and circumstances warrant it. Revocation and return to custody is authorized only based on the individualized facts and circumstances. 8 C.F.R. § 1236.1(c)(9). By regulation, revocation decisions are limited in nature and may only be made by certain authorized officials. 8 C.F.R. § 1236.1(c)(9).

CLAIMS FOR RELIEF

COUNT ONE

Violation of the INA

70. Petitioners reallege and incorporate by reference the allegations of fact set forth in the preceding paragraphs.

71. The mandatory detention provision at 8 U.S.C. Section 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who previously entered the country and were released from custody under section 1226(a) and placed into section 1229a removal proceedings. Such noncitizens are detained under section 1226(a), unless they are subject to sections 1225(b)(1), 1226(c), or 1231.

72. The continued application of section 1225(b)(2) to Petitioners, resulting in their mandatory detention, violates the INA.

COUNT TWO

Violation of Bond Regulations

73. Petitioners reallege and incorporate by reference the allegations of fact set forth in the preceding paragraphs.

74. An administrative agency is required to adhere to its regulations. See *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954).

75. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of "Apprehension, Custody, and Detention of Aliens," the agencies explained that "[d]espite being applicants for admission, *aliens who are present without having been admitted or paroled* . . . will be eligible for bond and bond redetermination." 62 Fed. Reg. at 10323 (emphasis added). The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under section 1226 and its implementing regulations.

76. Federal regulations require the government to grant bond hearings to people detained under section 1226(a) at the outset of their detention. 8 C.F.R. § 1236.1(d)(1); *see Jennings*, 583 U.S. at 306.

77. Nonetheless, pursuant to *Matter of Yajure Hurtado*, and in violation of long-standing regulations, EOIR now has a policy and practice of applying section 1225(b)(2) to individuals like Petitioners.

78. The continued application of section 1225(b)(2) to Petitioners, resulting in their mandatory detention, violates federal regulations.

COUNT THREE

Fifth Amendment Substantive Due Process

79. Petitioners reallege and incorporate by reference the allegations of fact set forth in the preceding paragraphs.

80. Petitioners ongoing detention violates their substantive due process rights because their liberty is being restricted without justification. *See Hensley v. Mun. Ct., San Jose Milpitas Jud. Dist.*, 411 U.S. 345, 351 (1973); 28 U.S.C. § 2241(c)(3).

81. 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).

82. Petitioners have a fundamental interest in their liberty. The only permissible detention purposes under section 1226—preventing danger and flight risk—are not present here, unlawfully infringing upon Petitioners' liberty interests. *See Zadvydas*, 533 U.S. at 690–91; *Demore v. Kim*, 538 U.S. 510, 528 (2003).

83. Accordingly, Petitioners' continued detention is unconstitutional and they should be released.

COUNT FOUR

Fifth Amendment Procedural Due Process

84. Petitioners reallege and incorporate by reference the allegations of fact set forth in the preceding paragraphs.

85. The government's infringement on Petitioners' liberty interests triggers a right to contest that infringement, for example, through a hearing before the right is deprived. *See Bd. of Regents of State Colleges v. Roth*, 408 U.S. 564, 569–70 (1972).

86. The sufficiency of any process afforded is determined by weighing three factors: (i) the private interest that will be affected by the official action, (ii) the risk of erroneous deprivation of that interest through the available procedures, and (iii) the government's interest, including the function involved and the fiscal and administrative burdens that additional or substitute procedures would entail. *Mathews v. Eldridge,* 424 U.S. 319, 335 (1976). "The essence of procedural due

process is that a person risking a serious loss be given notice and an opportunity to be heard in a meaningful manner and at a meaningful time." *M.S.L. v. Bostock*, No. 25-cv-1204, 2025 WL 2430267, at *8 (D. Or. Aug. 21, 2025) (citing *Mathews*, 424 U.S. at 348).

87. Petitioners' have a private right to a bond hearing because they are properly detained under a statute, 8 U.S.C. § 1226, that allows for release on bond. Because they are denied any hearing or any other of the procedural protections that such a significant deprivation of their liberty interests would require, their continued detention violates their procedural due process rights. *See Mathews,* 424 U.S. at 332–33.

88. Respondents' failure to grant an individualized hearing on whether Petitioners' detention is justified to prevent flight or mitigate risk of danger to the community creates the highest risk of erroneous deprivation of liberty. *See Zadvydas*, 533 U.S. at 690.

89. Respondents incur no additional burden by providing Petitioners' with such process because it merely comports with both the requirements of the INA and the constitutional protections guaranteed by the Fifth Amendment.

90. At least one Court in this District has found that individuals in Petitioners' position are entitled to a bond hearing and that an individual's entitlement to due process under the Fifth Amendment is not capped by the statute governing his detention. *See Vieira v. Anda-Ybarra*, No. EP-25-CV-00432-DB, 2025 WL 2937880 at *4 (W.D. Tex. Oct. 16, 2025) (rejecting the argument that an immigration detainee "is not entitled to more process than what Congress provided him by statute, regardless of whether the applicable statute is § 1225(b) or § 1226(a)," when that detainee is challenging their detention rather than removal, and was detained after living in the U.S. for years rather than on arrival).

91. As to the first *Mathews* factor, a "noncitizen's interest in his freedom pending the conclusion of his removal proceedings deserves great "weight and gravity."" *Id.* at *6 (citing *Addington*

v. Texas, 441 U.S. 418, 427 (1979); *Landon v. Plasencia*, 459 U.S. 21, 34 (1982)).

92. Denial of a bond hearing under section 1225(b)(2) "creates a substantial risk of erroneous deprivation of Petitioner's interest in being free from arbitrary confinement pending resolution of their removal proceedings," particularly when the petitioner is not a flight risk or danger and has lived in the U.S. for several years. *Id.* at *7. The value of an additional safeguard through a bond hearing to determine "whether continued detention is necessary to ensure presence at removal hearings and safety for the community" is high. *Id.*

93. Respondents' "generalized interest in ensuring noncitizens appear for their removal hearing and do not pose a risk to the communities in which they live" is extremely "diluted" in this case, because Petitioners' detention has harmed their ability to appear for their immigration court proceedings and they do not pose a danger or flight risk. *Id.* at *6."Further, any fiscal or administrative burdens Respondents may assert by having to provide a bond hearing are also diminished given [...] the government has conducted such hearings for the past thirty years until a change in the agency's interpretation of the law." *Id.*

94. For these reasons, Petitioners' ongoing detention is unconstitutional. They should be immediately released.

I. PRAYER FOR RELIEF

Wherefore, Petitioners' pray that this Court grant the following relief:

1. Assume jurisdiction over this matter;

2. Order Respondents to show cause within three (3) days why this Petition should not be granted;

3. Order that Petitioners' shall not be transferred outside of the Western District of Texas while this habeas petition is pending;

4. Issue a Writ of Habeas Corpus requiring that Respondents release Petitioners' or, in the

alternative, provide them with a bond hearing pursuant to 8 U.S.C. Section 1226(a) within seven days;

5. Declare that Petitioners' detention is unlawful;

6. Grant Petitioners' any preliminary relief to which they show themselves to be entitled;

7. Set an expedited hearing on Petitioner's motion for preliminary injunction, and after hearing, issue a Preliminary Injunction maintaining the above-requested relief during the pendency of this action;

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

Respectfully submitted,
MONTY & RAMIREZ LLP

By: */s/ Daniel N. Ramirez*

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Attorney for Petitioners
**Pro hac vice application pending*

28 U.S.C. Section 2242 VERIFICATION STATEMENT

I am submitting this verification on behalf of the Petitioners because I am one of the Petitioners' attorneys. I have discussed with the Petitioners, and/or someone acting in their behalf, the events described in this Petition. On the basis of those discussions, I hereby verify that the statements made in this Petition are true and correct to the best of my knowledge.

/s/ Daniel N. Ramirez

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CERTIFICATE OF EMERGENCY

I hereby certify that this motion seeks emergency relief due to Petitioner's imminent risk of removal, which would render their habeas corpus petition moot and cause irreparable constitutional harm.

/s/ Daniel N. Ramirez

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12/31/2025
Date

Attorney for Petitioner

CERTIFICATE OF CONFERENCE

I hereby certify that our office (Veronica Franco Salazar) contacted the designated AUSA and discussed the intent to file this pleading. No resolution could be reached so the filing of this pleading was required.

/s/ Daniel N. Ramirez 12/31/2025

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CERTIFICATE OF SERVICE

On December 31, 2025, Counsel for Plaintiff served a copy of the attached Motion via USPS Mail, in compliance with Rule 4 of Federal Rules of Civil Procedure, upon the **Respondent, Warden, in his Official Capacity as Warden of the Dilley Immigration Processing Center**, at (1) Office of the Warden, 300 El Rancho Way, Dilley, TX 78017, and (2) to the United States at Civil Process Clerk, U.S. Attorney's Office, 601 NW Loop 410,Suite 600 San Antonio, Texas, 78216.

/s/ Daniel N. Ramirez 12/31/2025

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Attorney for Petitioner

CERTIFICATE OF SERVICE

On December 31, 2025, Counsel for Plaintiff served a copy of the attached Motion via USPS Mail, in compliance with Rule 4 of Federal Rules of Civil Procedure, upon the **Respondent, Miguel Vergara, in his Official Capacity as Field Office Director, of ICE Enforcement and Removal Operations San Antonio Field Office**, at (1) Office of the Field Office Director, Enforcement and Removal Operations, San Antonio Field Office, 1777 NE Loop 410, Floor 15, San Antonio, TX 78217, and (2) to the United States at Civil Process Clerk, U.S. Attorney's Office, 601 NW Loop 410,Suite 600 San Antonio, Texas, 78216.

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Attorney for Petitioner

CERTIFICATE OF SERVICE

On December 31, 2025, Counsel for Plaintiff served a copy of the attached Motion via USPS Mail, in compliance with Rule 4 of Federal Rules of Civil Procedure, upon the **Respondent, Kristi Noem, in her Official Capacity as Director of U.S. Department of Homeland Security**, at (1) Office of General Counsel, U.S. Department of Homeland Security, 245 Murray Lane, SW, Mail Stop 0485, Washington, D.C. 20530; and (2) to the United States at Civil Process Clerk, U.S. Attorney's Office, 601 NW Loop 410,Suite 600 San Antonio, Texas, 78216.

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Attorney for Petitioner

CERTIFICATE OF SERVICE

On December 31, 2025, Counsel for Plaintiff served a copy of the attached Motion via USPS Mail, in compliance with Rule 4 of Federal Rules of Civil Procedure, upon the **Respondent, Todd Lyons, in his Official Capacity as Acting Director of U.S. Immigration and Customs Enforcement,** at (1) Office of the Principal Legal Advisor, 500 12th St. SW, Mailstop 5900, Washington, D.C. 20536; and (2) to the United States at Civil Process Clerk, U.S. Attorney's Office, 601 NW Loop

410, Suite 600 San Antonio, Texas, 78216.

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Attorney for Petitioner

CERTIFICATE OF SERVICE

On December 31, 2025, Counsel for Plaintiff served a copy of the attached Motion via USPS Mail, in compliance with Rule 4 of Federal Rules of Civil Procedure, upon the **Respondent, Pam Bondi, in her Official Capacity as Attorney General of the United States**, at (1) U.S. Attorney General, 950 Pennsylvania Avenue, NW, Washington, D.C. 20530-0001; and (2) to the Assistant Attorney General for Administration, U.S. Department of Justice, Justice Management Division, 950 Pennsylvania Avenue, NW, Room 1111, Washington, D.C. 20530; and (3) to the United States at Civil Process Clerk, U.S. Attorney's Office, 601 NW Loop 410,Suite 600 San Antonio, Texas, 78216.

/s/ Daniel N. Ramirez 12/31/2025

Daniel N. Ramirez — Date

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