UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

Bikram SHAH *Petitioner-Plaintiff* *v.* PAMELA BONDI, United States Attorney General KRISTI L. NOEM, Secretary of the U.S. Department of Homeland Security TODD M. LYONS, Acting Director of U.S. Immigration and Customs Enforcement SYLVESTER ORTEGA, Field Office Director for Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement ROSE THOMPSON, Warden Karnes County Immigration Processing Center *Respondents-Defendants*	Case No. 5:26-CV-20 DHS File Number: [redacted]

PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241 AND COMPLAINT FOR PRELIMINARY INJUNCTIVE RELIEF

The Petitioner, Bikram Shah, (hereinafter "Mr. Shah") respectfully petitions this Honorable Court for a Writ of Habeas Corpus to remedy Petitioner's unlawful detention in violation of his constitutional and statutory rights.

I. INTRODUCTION

1. Petitioner, Mr. Shah, is a 28-year-old national and citizen of Nepal.
2. Mr. Shah last entered the United States on approximately June 6, 2023, without being inspected or admitted, near Lukeville, Arizona.
3. On June 8, 2023, Mr. Shah was issued and served a Notice to Appear to initiate full removal proceedings pursuant to 8 U.S.C. § 1229. Exhibit A – Notice to Appear. The Notice to Appear charges Mr. Shah as being removable from the United States pursuant to 8 U.S.C. § 1182(a)(6)(A)(i). *Id.* He was ordered to appear before an Immigration Judge at Bikthe Dallas Immigration Court on December 2, 2027. *Id.*
4. Mr. Shah was detained for two days by immigration officials and was released on June 8, 2023. He was served with an ICE Form I-220A, Order of Release on Recognizance, indicating that he had been "arrested and placed in removal proceedings. In accordance with section 236 of the Immigration and Nationality Act [...] you are being released on your own recognizance." Exhibit B – ICE Form I-220A, Order of Release on Recognizance. He was ordered to report in person to the Duty Officer at ERO Dallas Field Office on June 22, 2023. *Id.* at 4.
5. ICE filed the Notice to Appear and the case was docketed by the Executive Office of Immigration Review Dallas Immigration Court on June 15, 2023. Exhibit A.

6. Mr. Shah was detained and taken into custody by Immigration and Customs Enforcement ("ICE") on July 23, 2025, at a scheduled check-in appointment in San Antonio, Texas.

7. Petitioner was immediately transferred to the Karnes County Immigration Processing Center to remain in ICE custody and has been detained there ever since. Exhibit C – ICE Form I-830E.

8. Prior to Petitioner's re-detention, Petitioner filed an I-589, Application for Asylum and for Withholding of Removal with the Dallas Immigration Court on October 10, 2023.

9. While in detention, Petitioner's removal proceedings have progressed. His asylum application was ultimately denied by Immigration Judge Meredith Tyrakoski on November 7, 2025. Exhibit D– Order of the Immigration Judge. Petitioner reserved his right to appeal, and the appeal was filed with the Board of Immigration Appeals on December 8, 2025 and accepted December 15, 2025. Exhibit E – Filing Receipt for an Appeal. As such, his removal order is not final and may not be executed while the direct appeal is pending before the BIA. 8 C.F.R. § 1003.6(a).

10. Prior to his re-detention, Mr. Shah had been in the United States for the past 2 years. Petitioner has resided in the Dallas and Austin, TX areas during that time. Petitioner was issued a five-year Employment Authorization Document by USCIS on April 11, 2024 based on his pending asylum application. Exhibit F – Employment Authorization Document; *see also* 8 C.F.R. § 274a.12(c)(8).

11. On July 8, 2025, DHS issued a memo to all employees of Immigration and Customs Enforcement ("ICE") stating that "[t]his message serves as notice that DHS, in coordination with the Department of Justice (DOJ), has revisited its legal position on detention and release authorities. DHS has determined that section 235 of the Immigration and Nationality Act (INA), rather than section 236, is the applicable immigration detention authority for all applicants for admission. The following interim guidance is intended to ensure immediate and consistent application of the Department's legal interpretation while additional operational guidance is developed." Memorandum, U.S. Immigration & Customs Enf't, Interim Guidance Regarding Detention Authority for Applications for Admission (July 8, 2025), available at AILA Doc. No. 25071607, https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission

12. The BIA's September 5, 2025, precedential decision in *Matter of Yajure-Hurtado*, held that the plain language of 8 U.S.C. § 1225(b)(2)(A) mandates that all aliens who have entered the United States without inspection or admission are subject to mandatory detention. 29 I&N Dec. 216 (BIA 2025). This decision is in contravention with the DHS's longstanding interpretation that noncitizens already present in the country such as Respondent were detained pursuant to 8 U.S.C. § 1226(a) and not §1225(b)(2)(A).

13. Petitioner's detention became unlawful on July 23, 2025, when ICE detained Petitioner under the authority of 8 U.S.C. § 1225(b)(2), rather than 8 U.S.C. §

1226(a). Petitioner, who was apprehended while already in the interior of the U.S. pending the outcome of proceedings, should not be considered an "applicant for admission" who is presently "seeking admission." Rather, his detention is pursuant to 8 U.S.C. § 1226(a), which was DHS's initial determination upon apprehension. Exhibit B – ICE Form I-220A, Order of Release on Recognizance.

14. Mr. Shah's continued detention is an unlawful violation of his Fifth Amendment right to due process, an incorrect interpretation of immigration law under the Immigration and Nationality Act (INA) and its implementing regulations and is *ultra vires*.

15. Petitioner respectfully requests this Court grant the instant petition for a writ of habeas corpus under 28 U.S.C. § 2241 and enjoin Respondent's continued detention of Petitioner to ensure his due process rights. In the alternative, Petitioner respectfully requests the Court order Respondents to show cause why this Petition should not be granted within three days. *See* 8 U.S.C. § 2243.

II. JURISDICTION AND VENUE

17. This action arises under the Constitution of the United States and the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et seq.*

18. This Court has subject matter jurisdiction pursuant to 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). This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgement Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

19. This Court is not stripped of its jurisdiction under 8 U.S.C. § 1252(g) as this case does not concern the Respondents' decision to commence removal proceedings, adjudicate cases, or execute removal orders. Nor does 8 U.S.C. § 1252(b)(9) apply as Petitioner is not challenging a removal order directly or indirectly. *See e.g.*, Vieira v. Anda-Ybarra, No. EP-25-CV-00432-DB, 2025 WL 2937880, 2025 U.S. Dist. LEXIS 203930 at *5-9 (W.D. Tex. Oct. 16, 2025). *See also Jennings v. Rodriguez*, 583 U.S. 281, 293 (2018). Nor does 8 U.S.C. § 1226(e) apply here as Petitioner is not challenging a discretionary judgment by the Attorney General.

20. Petitioner is detained in civil immigration custody at the Karnes County Immigration Processing Center in Karnes City, Texas. He has been detained since approximately July 23, 2025. Venue is proper in this district because Petitioner is detained within this district, no real property is involved in this action, and a substantial amount of the events giving rise to this claim occurred within this district. 28 U.S.C. § 1391(e).

III. REQUIREMENTS OF 28 U.S.C. § 2243, WRIT OF HABEAS CORPUS ISSUANCE, RETURN, HEARING AND DECISION

21. The Court either must grant the instant petition for writ of habeas corpus or issue an order to show cause to Respondents, unless Petitioner is not entitled to relief. If the Court issues an order to show cause, Respondents must file a response "within three days" unless the Court permits additional time for good cause, which is not to exceed twenty days. 28 U.S.C. § 2243.

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) (emphasis added). The writ of habeas corpus, challenging illegality of detention, is reduced to a sham if the trial courts do not act within a reasonable time. *Rhueark v. Wade*, 540 F. 2d 1282, 1283 (5th Cir. 1976); *Jones v. Shell*, 572 F.2d 1278, 1280 (8th Cir. 1978). Due to the nature of this proceeding, Petitioner asks this Court to expedite proceedings in this case as necessary and practicable for justice.

IV. PARTIES

23. Petitioner, Mr. Bikram Shah, is a 28-year-old citizen of Nepal. He is currently detained at the Karnes County Immigration Processing Center, 409 FM 1144, Karnes City, Texas in the custody, under the direct control, of Respondents and their agents. He has been detained in civil immigration detention since July 23, 2025.

24. Respondent Pamela Bondi is sued in her official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice (DOJ). In that capacity, she is responsible for the administration of the immigration laws and policy of the immigration courts. She has the authority to adjudicate removal cases and oversees the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the BIA.

25. Respondent Kristi Noem is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security (DHS). In this capacity, Respondent Noem is responsible for the implementation and enforcement of the INA, and oversees ICE, the component agency re-sponsible for Petitioner's detention. Respondent

Noem is empowered to carry out any administrative order against Petitioner and is a legal custodian of Petitioner.

26. Respondent Todd M. Lyons is sued in his official capacity as nationwide Acting Director of Immigration and Customs Enforcement (ICE). ICE is the agency within DHS that is specifically responsible for managing all aspects of the immigration enforcement process, including immigration detention. ICE is responsible for apprehension, incarceration, and removal of noncitizens from the United States and as such Acting Director Lyons is a legal custodian of Petitioner.

27. Respondent Sylvester Ortega is sued in his official capacity as the Director of the San Antonio Field Office of U.S. Immigration and Customs Enforcement. Director Ortega is responsible for the enforcement of the immigration laws within this district, and for ensuring that ICE officials follow the agency's policies and procedures. Respondent Ortega is a legal custodian of Petitioner and has authority to release him.

28. Respondent Rose Thompson is the Warden of Karnes County Immigration Processing Center, and she has immediate physical custody of Petitioner pursuant to a contract with ICE to detain noncitizens and is a legal custodian of Petitioner. She is sued in her official capacity, as well as by any successors or assigns.

V. STATEMENT OF FACTS AND PROCEDURAL BACKGROUND

29. Petitioner, Mr. Shah, is a 28-year-old national and citizen of Nepal.

30. Mr. Shah entered the United States on June 6, 2023, without being inspected or admitted, near Lukeville, Arizona. He has not departed the United States.

31. Mr. Shah was placed into removal proceedings under 8 U.S.C. § 1229(a), thorough the issuance of a Notice to Appear dated June 8, 2023. He was released from custody pursuant to an Order of Release on Recognizance.

32. Petitioner was detained and taken into ICE custody during a scheduled check-in appointment at the San Antonio ICE office. He was subsequently transferred to the Karnes County IPC. He has been detained at Karnes County IPC since then.

33. ICE filed the Notice to Appear and the case was docketed by the Executive Office for Immigration Review - Dallas Immigration Court on June 15, 2023.

34. ICE has held him without bond. Section 236 of the INA is codified at 8 U.S.C. § 1226 and noncitizens held under its authority have a right to have their custody determination reviewed by an Immigration Judge.

35. Respondent applied for Asylum with the Immigration Judge. That application was denied by the IJ, however that decision is not final as a direct appeal has been filed with the Board of Immigration Appeals.

36. Petitioner has resided in the Dallas and Austin, Texas area for the past 2 years with a validly issued Employment Authorization Document.

VI. LEGAL FRAMEWORK

A. Due Process Clause

37. "It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings." *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at

the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

38. Due Process requires that there be "adequate procedural protections" to ensure that the government's asserted justification for a noncitizen's physical confinement "outweighs the 'individual's constitutionally protected interest in avoiding physical restraint.'" *Id.* at 690 (quoting *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997)). In the immigration context, the Supreme Court only recognizes two purposes for civil detention: preventing flight and mitigating the risks of danger to the community. *Zadvydas*, 533 U.S. at 690; *Demore*, 538 U.S. at 528. A noncitizen may only be detained based on these two justifications if they are otherwise statutorily eligible for bond. *Zadvydas*, 533 U.S. at 690.

39. "The fundamental requirement of due process is the opportunity be heard at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). To determine what process Petitioner is due, this Court should consider (1) the private interest affected by the government action; (2) the risk that current procedures will cause an erroneous deprivation of that private interest, and the extent to which that risk could be reduced by additional safeguards; and (3) the government's interest in maintaining the current procedures, including the governmental function involved and the fiscal and administrative burdens that the substitute procedural requirement would entail. *Id.* at 335.

B. Immigration and Nationality Act

40. Title 8 of the United States Code, which codifies the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et seq.*, sets forth the Government's authority to detain aliens during their removal proceedings.

41. The INA authorizes detention for aliens under four distinct provisions:

a. **Discretionary Detention, 8 U.S.C. § 1226(a)** generally allows for the detention of aliens already present in the United States who are in regular, non-expedited removal proceedings; however, permits aliens who are not subject to mandatory detention to be released on bond or on their own recognizance. Its implementing regulations affords noncitizens procedural protections such as a bond redetermination hearing before an IJ and the right to appeal the custody determination. *See* 8 C.F.R. §§ 1236.1(d); 1003.19.

b. **Mandatory Detention of "Criminal" Aliens, 8 U.S.C. § 1226(c)** generally requires mandatory detention of aliens who are subject to removal because of certain criminal or terrorist-related activity after they have been released from criminal custody or incarceration.

c. **Mandatory Detention of "Applicants for Admission", 8 U.S.C. § 1225(b)** generally requires detention for certain noncitizens deemed "applicants for admission", such as aliens immediately arriving in the U.S. at a port of entry or other noncitizens who have recently arrived and are actively "seeking admission" after entering the United States unlawfully.

d. Detention Following Completion of Removal Proceedings, 8 U.S.C. § 1231(a) generally requires the detention of certain noncitizens who are subject to a final order of removal during the 90-day period after the completion of removal proceedings and permits detention beyond that point for certain noncitizens. 8 U.S.C. § 1231(a)(2), (6).

42. This case concerns whether Petitioner is detained pursuant to 8 U.S.C. § 1225(b)(2) or § 1226. Both provisions were enacted as part of the Illegal Immigration Reform and Responsibility Act ("IIRIRA") of 1996, Pub. L. No. 104-208, Div. C. §§ 203-03, 110 Stat. 3009-546, 3009-582 to 3009-583, 3009-585. Earlier this year, section 1226 was recently amended by the Laken Riley Act, Pub. L. No 119-1, 139 Stat. 3 (2025).

43. Following 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(b) and that they were instead detained under § 1226(a) after an arrest warrant was issued by the Attorney General. *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) ("Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) *will be eligible for bond and bond redetermination*") (emphasis added).

44. Until recently, for nearly thirty years, the longstanding agency practice of ICE (an agency of DHS) and EOIR (an agency of DOJ) was to interpret § 1226(a) to apply to noncitizens who were already present in the United States and arrested in the interior of the United States irrespective of their manner of entry. If it was determined that the noncitizen was not a flight risk or danger to the community, a change in their custody status was granted and they were released from detention either by paying the requisite bond amount or on their own recognizance. 8 U.S.C. § 1226(a)(2). Certain noncitizens were deemed ineligible for release and mandatorily detained because of their criminal history pursuant to 8 U.S.C. § 1226(c).

45. On July 8, 2025, without warning, ICE (in coordination with DOJ) reversed course and adopted a policy that upended the well-established understanding of the statutory and regulatory framework and altered decades of practice. The new policy claims that all noncitizens that entered the U.S. without admission or inspection are "applicants for admission" and charged with removability under § 1182 are subject to mandatory detention pursuant to 8 U.S.C. § 1225(b). Under this new policy, only noncitizens who were admitted to the US and charged with deportability under 8 U.S.C. § 1227 are detained under § 1226(a) and therefore eligible for a custody determination (if not subject to mandatory detention under 8 U.S.C. § 1226(c)).

46. The new policy applies to all noncitizens regardless of historically relevant particularities to determine whether a noncitizen should be released or remain in custody, such as: the time, place or manner of entry, length of time in the U.S.;

whether they pose a flight risk or danger to the community; whether there are serious medical conditions that require ongoing care for the noncitizen or their family; their family ties in the United States whom require necessary care dependent on the noncitizen; and whether their continued detention is in the community's best interest. Significantly, the policy also applies to noncitizens previously arrested and were determined to be detained, released, or re-detained pursuant to § 1226(a).

47. On September 5, 2025, the BIA (an agency of DOJ) issued a published decision in *Matter of Yajure-Hurtado*, where it engaged in a statutory and regulatory interpretation of §1225 and § 1226, and held that IJs lacked jurisdiction to conduct bond requests for inadmissible noncitizens as they are subject to mandatory detention under the "plain language" of § 1225. *See* 29 I&N Dec. 216 (BIA 2025) (citing *Jennings v. Rodriguez*, 583 U.S. 281 (2018)). The BIA's holding tracks the arguments set forth by ICE in their recent policy change.

48. Numerous district courts, many in this Court's district, have held that Respondents' new policy violates the plain language of the INA and is unlawful. *See e.g.*, Hernandez-Fernandez v. Lyons, 5:25-CV-00773-JKP, 2025 U.S. Dist. Lexis 20675 (W.D. Tex. Oct. 21, 2025) (granting petition for writ of habeas corpus and collecting 12 cases); Vieira v. Anda-Ybarra, No. EP-25-CV-00432-DB, 2025 WL 2937880, 2025 U.S. Dist. LEXIS 203930 (W.D. Tex. Oct. 16, 2025) (granting petition for writ of habeas corpus); Buenrostro-Mendez v. Bondi, Case No. H-25-3726, 2025 WL 2886346, at *2 (S.D. Tex. Oct. 7, 2025); Ortiz-Ortiz v. Bondi, No. 5:25-CV-132,

slip op. at *4 n.1 (S.D. Tex. Oct. 15, 2025); Rodriguez v. Bostock, No. 3:25-cv-5240, 2025 WL 2782499, at *1 & n.3 (W.D. Wash. Sep. 30, 2025) (collecting cases and noting that "[e]very district court to address" the statutory question "has concluded that the government's position belies the statutory text of the INA, canons of statutory interpretation, legislative history, and longstanding agency practice").

49. Similarly, numerous district courts have refused to find persuasive or give the BIA's statutory interpretation of § 1225 and §1226 deference in *Matter of Yajure-Hurtado* as statutory interpretation is in the province of the federal courts, not agencies. *See e.g.*, Buenrostro-Mendez v. Bondi, Case No. H-25-3726, 2025 WL 2886346, at *6 (S.D. Tex. Oct. 7, 2025) (citing *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 413 (2024) and collecting cases). Ortiz-Ortiz v. Bondi, No. 5:25-CV-132, slip op. at *4 n.1 (S.D. Tex. Oct. 15, 2025) (citing Salcedo Aceros v. Kaiser, No. 25-CV-6924, 2025 WL 2637503, at *12 (N.D. Cal. Sept. 12, 2025)).

50. This new interpretation is now advanced by the government after decades of consistent use to the contrary. The government's position contravenes the plain language of the INA and its regulations and has been consistently rejected by courts. See, e.g., Martinez, 2025 WL 2084238; Gomes v. Hyde, No. 1:25-cv-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); Rodriguez v. Bostock, No. 3:25-cv-05240-TMC, 2025 WL 1193850 (W.D. Wash. Apr. 24, 2025).

51. This new interpretation is inconsistent with the plain language of the INA. First, the government disregards a key phrase in § 1225. "[I]n the case of an alien who is an applicant for admission, if the examining immigration officer determines

that an alien ***seeking admission*** is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a[.]" 8 U.S.C. § 1225(b)(2)(A) (emphasis added). In other words, mandatory detention applies when "the individual is: (1) an 'applicant for admission'; (2) 'seeking admission'; and (3) 'not clearly and beyond a doubt entitled to be admitted.'" *Martinez*, 2025 WL 2084238, at *2. The "seeking admission" language, "necessarily implies some sort of present tense action." Martinez, 2025 WL 2084238, at *6; *see also Matter of M-D-C-V-*, 28 I. & N. Dec. 18, 23 (B.I.A. 2020) ("The use of the present progressive tense 'arriving,' rather than the past tense 'arrived,' implies some temporal or geographic limit . . . ."); *U.S. v. Wilson*, 503 U.S. 329, 333 (1992) ("Congress' use of verb tense is significant in construing statutes.")

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

53. Second, the government's interpretation would render newly enacted portions of the INA superfluous. "When Congress amends legislation, courts must presume it intends its amendment to have real and substantial effect." *Van Buren v. United States*, 593 U.S. 374, 393 (2021). Congress passed the Laken Riley Act (the "Act") in January 2025. The Act amended several provisions of the INA, including §§ 1225 and 1226. Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025). Relevant here, the Act added a new category of noncitizens subject to mandatory detention under §

1226(c)—those already present in the United States who have also been arrested, charged with, or convicted of certain crimes. 8 U.S.C. § 1226(c)(1)(E); 8 U.S.C. § 1182(a)(6)(A). Of course, under the government's position, these individuals are already subject to mandatory detention under § 1225—rendering the amendment redundant. Likewise, mandatory-detention exceptions under § 1226(c) are meaningful only if there is a default of discretionary detention—and there is, under § 1226(a). *See* Rodriguez, 2025 WL 1193850, at *12

54. Additionally, "[w]hen Congress adopts a new law against the backdrop of a longstanding administrative construction, the court generally presumes that the new provision works in harmony with what came before." *Monsalvo v. Bondi*, 604 U.S. ___, 145 S. Ct. 1232, 1242 (2025). Congress adopted the Act against the backdrop of decades of agency practice applying § 1226(a) to immigrants like Petitioner, who are present in the United States but have not been admitted or paroled. Rodriguez, 2025 WL 1193850, at *15; Martinez, 2025 WL 2084238, at *4; 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) ("Despite being applicants for admission, aliens who are present without having been admitted or paroled . . . will be eligible for bond and bond redetermination.").

55. On November 25, 2025, a District Court in the Central District of California certified a nationwide class action for individuals similarly situated to Petitioner and extended the same declaratory relief to the entire class. *See* Maldonado Bautista v. Santacruz, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025). Five days earlier, that Court had granted partial summary

judgment in favor of the named Plaintiffs. *See* Maldonado Bautista v. Santacruz, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3289861 (C.D. Cal. Nov. 20, 2025).

56. Petitioner is a class member as defined in *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (C.D. Cal.). In *Maldonado Bautista* the court certified the Bond Eligible Class, defined as:

> 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.

Maldonado Bautista v. Santacruz, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025).

57. However, Respondents collectively, have taken various legal positions in opposition to the court's orders denying relief to class members. Respondents, through IJs as inferior officers of the Attorney General, have denied Class Members' bond requests by holding that the district court granted class certification and partial summary judgement for the named plaintiffs, but did not issue a class-wide declaratory judgment. Other IJs contend that the court's orders do not constitute the issuance of a binding, final judgment. The district court had set a status conference for January 16, 2026, to discuss pending issues in that case.

58. On December 18, 2025, the district court in Maldonado Bautista v. Santacruz entered final judgement, finding class members are detained under § 1226(a) and not subject to mandatory detention and are entitled to release on bond by

immigration officers or an IJ, and vacated the July 8, 2025 DHS policy. No. 5:25-CV-01873-SSS-BFM, Dkt. 94 (C.D. Cal. Dec. 18, 2025). The final judgment binds Respondents to the court's order. *See* FED. R. CIV. PRO R. 54(a)-(b). Federal Respondents have filed a notice of appeal with the Ninth Circuit to the district court's orders.

59. Petitioner's habeas corpus case is ripe for review. Although Petitioner has not requested a bond hearing pursuant to 8 U.S.C. § 1226(a) and its corresponding regulations, that request would be futile since *Matter of Yajure-Hurtado* held that an IJ lacks jurisdiction to conduct a bond hearing in this matter, and any appeal would sustain the same fate making the bond request a foregone conclusion. Exhaustion is not a statutory requirement for a writ of habeas corpus. *See* Buenrostro-Mendez v. Bondi, Case No. H-25-3726, 2025 WL 2886346, at *4 (S.D. Tex. Oct. 7, 2025) (citing *Lopez Benitez v. Francis,* 25 Civ. 5937, 2025 WL2371588, at *13 (S.D.N.Y. August 13, 2025)),

60. Moreover, delaying awaiting any appeal of the IJ's decision with the BIA would severely prejudice Petitioner. According to the agency's own data, during fiscal year 2024, the BIA's average processing time for a bond appeal was 204 days, approximately seven months. *See* Vazquez v. Bostock, 3:25-CV-05240-TMC (D. W.D. Wash. May 2, 2025). Meaning for an average case, such as Petitioner's, where bond would be denied in January 2026 it would not be heard until August 2026.

VII. CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

Violation of the Due Process Clase of the Fifth Amendment of the United States Constitution.

61. The Due Process Clause asks whether the government's deprivation of a person's life, liberty, or property is justified by a sufficient purpose. Here, there is no question that the government has deprived Petitioner of his liberty. His continued detention violates his right to substantive and procedural due process guaranteed by the Fifth Amendment to the U.S. Constitution.

62. The Due Process Clause of the Fifth Amendment to the U.S. Constitution provides that "[n]o person shall...be deprived of life, liberty, or property without due process of law." As a noncitizen who has been in the United States for over 3 years, has applied for asylum and been granted employment authorization, Mr. Pingu is entitled to Due Process Clause protections against deprivation of liberty and property. *See Zadvydas*, 533 U.S. at 693 ("[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent."). Any deprivation of this fundamental liberty interest must be accompanied not only by adequate procedural protections, but also by a "sufficiently strong special justification" to outweigh the significant deprivation of liberty. *Id.* at 690.

63. Respondents determined that Petitioner was to be released from custody pursuant to their detention authority under 8 U.S.C. § 1226 on June 8, 2023, as evidenced by the Form I-220 served on Petitioner on June 8, 2023. Exhibit B. By electing to release Petitioner under this authority, the Respondents fail to reserve its right to treat Petitioner "in the same manner as that of any other applicant for

admission to the United States." *See* Lema v. FCI Berlin, Case No. 1:25-CV-386-JL, 2025 U.S. Dist. Lexis 216786, 2025 DNH 127 (D.N.H. Nov. 4, 2025 (quoting 8 U.S.C. § 1182(d)(5)(A)). "An agency must def. end its actions based on the reasons it gave when it acted." *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 24 (2020).

64. Respondent's new policy, along with the BIA's decision in *Yajure-Hurtado* violates the procedural due process rights of noncitizen detainees, both facially and as applied. It lacks any reference to or establishment of any procedure for challenging its invocation. The Court should find that there can be no possible application of this policy that would satisfy due process where it purports to authorize the most severe and recognized deprivation of liberty without a hint of a process to challenge such deprivation. In contrast, as the Supreme Court in *Demore* highlighted in upholding the mandatory detention of a noncitizen convicted of a crime under § 1226(c), "process" has been built into that mandatory detention scheme. For example, § 1226(c) applies to detainees whose convictions were generally "obtained following the full procedural protections [the] criminal justice system offers." *Demore v. Kim*, 538 U.S. 510, 513 (2003); id. at 525 n.9, (noting that "respondent became 'deportable' under § 1226(c) only following criminal convictions that were secured following full procedural protections"). And if mandatory detention becomes unnecessarily prolonged in that context, the due process' prohibition of arbitrary government detention could entitle a detainee "to an individualized determination as to his risk of flight and dangerousness if the

continued detention became unreasonable or unjustified." Id. at 532 (Kennedy, J., concurring). Detention pursuant to the automatic stay after the government already failed to establish a justification for it, with no process afforded to challenge the detention as arbitrary, is facially violative of procedural due process.

65. The Fifth Amendment guarantees that no person shall be deprived of liberty 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 Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). "Government detention violates the Due Process Clause unless it is ordered in a criminal proceeding with adequate procedural safeguards, or in certain special and non-punitive circumstances 'where a special justification ... outweighs the individual's constitutionally protected interest in avoiding physical restraint.' " *Zavala v. Ridge*, 310 F. Supp. 2d 1071, 1076 (N.D. Cal. 2004) (quoting *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997)).

66. Here, the DHS, affirmed by the BIA, has determined, improperly, that all persons present in the U.S. who are present without admission are ineligible for bond. It is thus a foregone conclusion that the BIA would affirm the IJ's decision denying jurisdiction and find Petitioner ineligible for bond. Like the accused in criminal cases, habeas is proper. See *Moore v. Dempsey*, 261 U.S. 86 (1923); *Johnson v. Zerbst*, 304 U.S. 458 (1938); *Burns v. Wilson,* 346 U.S. 137, 154 (1953).

SECOND CAUSE OF ACTION
Violation of the Immigration and Nationality Act

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

68. Petitioner was detained and released pursuant to authority contained in section 236 of the INA; section 236 is codified at 8 U.S.C. § 1226. Exhibit B; *see also Tinoco-Pineda v. Noem, et. al.*, SA-25-CV-01518-XR, 2025 WL 3471418 (W.D. Tex. Dec. 2, 2025) (holding that a *habeas* petitioner who was explicitly released pursuant to § 1226 and re-detained at a routine check-in was not subject to mandatory detention pursuant to § 1225(b)(2)). *Despite* this, an IJ, the BIA, and the DHS will now find that he is detained subject to 8 U.S.C. § 1225(b).

69. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. Mandatory detention does not apply to those who previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a) and are eligible for release on bond, unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

70. Respondents have wrongfully adopted a policy and practice of arguing all noncitizens, such as Petitioner, are subject to mandatory detention under § 1225(b)(2).

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

THIRD CAUSE OF ACTION
Violation of the Immigration and Nationality Act: Request for Relief Pursuant to *Maldonado Bautista v. Santacruz*

72. Petitioner re-alleges and incorporates herein by reference each and every allegation contained in the above paragraphs of this Petition.

73. As a member of the Bond Eligible Class, Petitioner is entitled to consideration for release on bond pursuant to 8 U.S.C. § 1226(a).

74. The order granting final judgment in *Maldonado Bautista* holds that Respondents violate the INA in applying § 1225(b)(2), the mandatory detention statute, to class members.

75. The order granting class certification in *Maldonado Bautista* further orders that "[w]hen considering this determination with the MSJ order, the Court extends the same declaratory relief granted to Petitioners to the Bond Eligible Class as a whole."

76. Federal Respondents are parties to *Maldonado Bautista* and bound by the District Court's declaratory judgement, which has the full "force and effect of a final judgement." 28 U.S.C. § 2201(a).

77. By denying Petitioner a bond hearing under § 1226(a) and asserting that Petitioner and class members are subject to mandatory detention under § 1225(b)(2), Respondents violate Petitioner's statutory rights under the INA and the Court's judgment in *Maldonado Bautista*.

FOURTH CAUSE OF ACTION
Injunctive Relief

78. Petitioner re-alleges and incorporates herein by reference each and every allegation contained in the above paragraphs of this Petition.

79. This Court has the discretion to enter a temporary restraining order and a preliminary injunction. *See Haitian Refugee Center v. Nelson*, 872 F.2d 1555, 1561-

1562 (11th Cir. 1989). "To be entitled to a preliminary injunction, the applicants must show (1) a substantial likelihood that they will prevail on the merits, (2) a substantial threat that they will suffer irreparable injury if the injunction is not granted, (3) their substantial injury outweighs the threatened harm to the party whom they seek to enjoin, and (4) granting the preliminary injunction will not disserve the public interest." *Tex. Med. Providers Performing Abortion Servs. v. Lakey*, 667 F.3d 570, 574 (5th Cir. 2012). All four elements must be demonstrated to obtain injunctive relief. *Id.*

VIII. RELIEF SOUGHT

Wherefore, Petitioner respectfully requests that this Honorable Court:

1) Assume jurisdiction over this matter;
2) Declare that Respondents' new mandatory detention policy that all noncitizens that entered the U.S. without admission or inspection are "applicants for admission" and charged with removability under § 1182 are subject to mandatory detention pursuant to 8 U.S.C. § 1225(b) is unlawful and in violation of the INA;
3) Issue an order directing Respondents to show cause why the writ should not be granted within seventy-two hours;
4) Order Respondents to file with the Court a complete copy of the administrative file from the Dept. of Justice and the Dept. of Homeland Security including, but not limited to any documents related to his instant detention;

5) Enjoin ICE from transferring Petitioner outside of the Western District of Texas while this matter is pending;

6) Grant the writ of habeas corpus ordering Respondents to release Petitioner.

7) In the alternative, Respondents should provide Petitioner a fair bond redetermination hearing before an Immigration Judge as provided by 8 U.S.C. § 1226(a) and enjoin his further detention under § 1225(b). Many courts, including some in this district, have placed the burden on Respondents to bear the burden of justifying Petitioner's continued detention by clear and convincing evidence at the bond redetermination hearing. *See* Vieira v. Anda-Ybarra, No. EP-25-CV-00432-DB, 2025 WL 2937880, 2025 U.S. Dist. LEXIS 203930 (W.D. Tex. Oct. 16, 2025) (collecting cases); Erazo Rojas v. Noem, No. EP-25-CV-442-KC, 2025 WL 3038262, 2025 U.S. Dist. LEXIS 217585 (W.D. Tex. Oct. 30, 2025).

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

Respectfully submitted this 5th day of January 2026 by:

/s/ Eric M. Bernal
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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Bikram Shah, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 5th day of January 2026.

/s/ Eric M. Bernal
Eric M. Bernal, Esq.