

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS

CONCEPCION RAMIREZ LOPEZ

v.

MARY DE ANDA-YBARRA,
Field Office Director at ICE El Paso Field Office;
TODD LYONS, Acting Director of
U.S. Immigration and Customs Enforcement
KRISTI NOEM, Secretary of the U.S.
Department of Homeland Security;
and, PAMELA BONDI,
Attorney General of the United States,
in their official capacities

Respondents.

Case No: 3:26-cv-11

PETITION
FOR WRIT OF HABEAS
CORPUS

INTRODUCTION

1. Concepcion Ramirez Lopez (hereinafter referred to as “Concepcion,” “Mr. Ramirez,” or “Petitioner”) seeks to file this Petition for Writ of Habeas Corpus with the Court.
2. Mr. Ramirez is a native and citizen of Guatemala who entered the United States on or about 2003. Before detention, Petitioner was residing at [REDACTED], Dorchester, MA. He is currently detained at the ERO El Paso Camp East Montana, located at 6920 Digital Road, El Paso, Texas 79936.
3. Mr. Ramirez entered the United States without admission on or about 2003, was not placed in removal proceedings upon entry but was apprehended by Immigration and Customs Enforcement (“ICE”) around September 10, 2025, when he was leaving his home in Dorchester, MA.

4. Petitioner is scheduled to appear before the El Paso Immigration Court on February 11, 2026, for a Master Calendar Hearing – status hearing.
5. Petitioner has requested a bond hearing before the Immigration Court. However, bond was denied based on recent decisions by the Board of Immigration Appeals, especially *Matter of Yajure Hurtado*; the Immigration Judge denied jurisdiction over Petitioner's bond case and allow the government to continue detaining Petitioner indefinitely without an opportunity for an independent judge to analyze his custody. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).
6. Petitioner's detention violates federal law, as well as the Fifth Amendment of the United States Constitution.
7. Accordingly, to vindicate Petitioner's statutory and constitutional regulatory rights, this Court should grant the instant petition for a writ of habeas corpus. Mr. Ramirez requests that this Court immediately release him from detention and enjoin the Respondents from re-detaining him unless there are changes in the circumstances that would justify detention.
8. Furthermore, Petitioner also requests this Court to issue a restraining order to prevent Petitioner from being transferred from the state of Texas for the duration of these proceedings.

JURISDICTION

9. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*
10. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus) and 28 U.S.C. § 1331 (federal question).

11. 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.*, and the All Writs Act, 28 U.S.C. § 1651.

VENUE

12. Venue is proper in this District because Respondents are officers, employees, or agencies of the United States, and the Petitioner is currently detained within the jurisdiction of this District. 28 U.S.C. § 2241.

PARTIES

13. Petitioner is a native and citizen of Guatemala who entered the U.S. on or about 2003. He has never left the country since. He is detained at ERO El Paso Camp East Montana, in El Paso, Texas, and is in custody and under the direct control of Respondents and their agents.
14. Respondent, Mary de Anda-Ybarra, Field Office Director at El Paso Field Office, is sued in her official capacity as the Acting Director of U.S. Immigration and Customs Enforcement. She is a legal custodian of the Petitioner and has the authority to release her.
15. Respondent, Todd Lyons, is sued in his official capacity as the Acting Director of U.S. Immigration and Customs Enforcement. He is responsible for the overall administration, supervision, and enforcement of immigration detention and removal operations nationwide, including policies governing the custody and release of noncitizens. Respondent Lyons is therefore a legal custodian of Petitioner.
16. Respondent, Kristi Noem, is sued in her official capacity as the Secretary of U.S. Department of Homeland Security ("DHS"). In her capacity, Respondent Noem is responsible for the implementation and enforcement of the Immigration and Nationality Act, and oversees U.S.

Immigration and Customs Enforcement, the component agency responsible for Petitioner's detention. Respondent Noem is a legal custodian of Petitioner.

17. Pamela Bondi, Attorney General of the United States, is sued in her official capacity and as the legal representative of the U.S. government.

STATEMENT OF FACTS

18. Mr. Ramirez is a native and citizen of Guatemala who entered the U.S. on or about 2003.

Before detention, Petitioner was residing at 95 Dakota Street, Dorchester, MA. He is currently detained at the ERO El Paso Camp East Montana, in El Paso, Texas.

19. Following Mr. Ramirez's entry into the United States, he was not placed in removal proceedings.

20. Petitioner lived in the United States for over 20 years and dedicated his life to work and supporting his family. Respondent is married to Mirsa Salguero, and together they have three United States citizen ("USC") children:

[REDACTED]

21. On September 10, 2025, Petitioner was detained as he was leaving his home in Dorchester, MA. Since then, Petitioner has been moved from the Burlington Field Office in Massachusetts to a detention facility in Buffalo, NY, and finally to El Paso, Texas, where he has no family or friends.

22. Petitioner has requested a bond hearing before the Immigration Court. However, bond has been denied based on recent decisions by the Board of Immigration Appeals, specifically *Matter of Yajure Hurtado*, the Immigration Judge denied jurisdiction over Petitioner's bond case and allowed the government to continue detaining Petitioner indefinitely without an opportunity

for an independent adjudicator to analyze his custody. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

23. In the present case, the Petitioner has established before the Immigration Court his *prima facie* eligibility for non-LPR Cancellation of Removal. The Petitioner has resided continuously in the United States for more than 20 years, is a person of good moral character, he does not have a criminal record and has qualifying relatives – his three USC children.
24. Mr. Ramirez's three USC children will suffer exceptional and extremely unusual financial, medical, and emotional hardships in Petitioner's absence, as they depend mainly on Petitioner for their financial, and emotional support.
25. Mr. Ramirez has therefore established a reasonable and substantial likelihood of success in the underlying relief of non-LPR Cancellation of Removal so that "it would be worthwhile to develop issues further" at a full evidentiary hearing. *See Tadevosyan v. Holder, Id.*, at 1255.
26. The reason for Petitioner's detention remains unclear, especially considering that he was never in removal proceedings since entering in 2003.
27. He is currently scheduled for a Master Calendar Hearing before the El Paso Immigration Court on February 11, 2026. This is a preliminary status hearing.
28. Petitioner's detention violates the Fifth and Fourth Amendments of the United States Constitution and federal law. Petitioner is detained without even having an opportunity to have a bond hearing, and Respondents have infringed his constitutional rights by unlawfully arresting and detaining him.

LEGAL FRAMEWORK

29. The Immigration and Nationality Act (“INA”) establishes the statutory framework governing the entry, presence, and removal of noncitizens in the United States. Regulations promulgated by the agencies charged with enforcing the INA set forth specific procedures for classifying noncitizens. When a noncitizen arrives at the border seeking entry into the United States, they are deemed an “applicant for admission.” The INA defines several grounds of “inadmissibility.” For example, a noncitizen who arrives at a port of entry without being admitted or paroled – such as Petitioner – may be found inadmissible pursuant to 8 U.S.C. § 1182(a)(6)(A)(i).
30. Under 8 U.S.C. § 1225, “An alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters) shall be deemed for purposes of this chapter an applicant for admission.” Applicants for admission are among the individuals who can be placed in expedited removal, in which case they are subject to mandatory detention. INA § 235(b)(1)(B)(i)(IV).
31. If an applicant for admission is not placed in expedited removal proceedings under INA § 235 or is later placed in removal proceedings under INA § 240, detention is no longer mandatory. In these cases, noncitizens are sometimes released from custody and allowed to remain in the United States for the duration of their proceedings. 8 U.S.C. § 1226 (a).
32. Recently, however, Immigration Courts have shifted their long-standing interpretation, holding that they lack jurisdiction to conduct custody redeterminations for individuals who were placed in proceedings upon arrival, later released into the United States, and then detained years afterward for a different reason. Recent decisions by the Board of Immigration Appeals

(“BIA”) have stripped Immigration Judges of jurisdiction over these cases. *See Matter of Q. LI*, 29 I&N Dec. 66 (BIA 2025); *also Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). The latter decision is based on a position that every individual who unlawfully entered the U.S., not matter how long they have remained in the U.S. or where they were apprehended, is an “applicant for admission.”

33. The recent interpretation by the BIA, which was adopted after a novel interpretation of the law by DHS, violates the Fifth Amendment, and is also contrary “to the plain text of the statute and the overall statutory scheme.” *Aguiriano Romero v. Hyde*, No. 25-cv-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *also Diaz Martinez v. Hyde*, — F. Supp. 3d —, 2025 WL 2084238 (D. Mass. July 24, 2025); *see also, e.g., Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239, 1277 (W.D. Wash. 2025) (holding same); *Gomes v. Hyde*, 2025 WL 1869299 (D. Mass. July 7, 2025) (same); *Garcia v. Hyde*, Civ. No. 25-11513 (D. Mass. July 14, 2025) (same); *Rosado v. Bondi*, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025) (same), *report and recommendation adopted without objection*, 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, — F. Supp. 3d —, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025) (same); *dos Santos v. Noem*, 2025 WL 2370988 (D. Mass Aug. 14, 2025) (same); *Aguilar Maldonado v. Olson*, 2025 WL 2374411 (D. Minn. Aug. 15, 2025) (same); *Escalante v. Bondi*, 2025 WL 2212104 (D. Minn. July 31, 2025) (granting preliminary relief after positively weighing likelihood of success), *report and recommendation adopted sub nom. O. E. v. Bondi*, 2025 WL 2235056 (D. Minn. Aug. 4, 2025); *Arrazola-Gonzalez v. Noem*, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025) (granting individualized bond hearings on *ex parte* motion for temporary restraining order after finding likelihood of success); *Garcia Jimenez v. Kramer*,

2025 WL 2374223 (D. Neb. Aug. 14, 2025) (granting relief from stay of bond order pending BIA appeal); *Mayo Anicasio v. Kramer*, 2025 WL 2374224 (D. Neb. Aug. 14, 2025) (same); *Rodrigues De Oliveira v. Joyce*, 2025 WL 1826118 (D. Me. July 2, 2025) (recognizing disagreement as to the detention statutes and granting habeas petition on due process grounds). *But see Pena v. Hyde*, 2025 WL 2108913 (D. Mass. July 28, 2025) (distinction between §§ 1225 and 1226 not addressed); *See Salazar v. Dedos*, No. 1:25-cv-00835-DHU-JMR, 2025 WL 2676729 (D.N.M. Sep. 17, 2025) (“The Court found at the hearing that Petitioner’s detention is rightfully governed by 8 U.S.C. § 1226(a), rather than § 1225(b)(2)(A), and ordered that he receive an individualized bond hearing under § 1226 no later than 7 days from the date of the hearing. In the absence of such a bond hearing, the Court ordered Petitioner’s immediate release.”).

CLAIMS FOR RELIEF

COUNT ONE

Violation of the Immigration and Nationality Act (INA)

34. As mentioned, the Immigration and Nationality Act (INA) establishes the statutory framework governing the entry, presence, and removal of noncitizens in the United States. Regulations promulgated by the agencies charged with enforcing the INA set forth specific procedures for classifying noncitizens.
35. Mr. Ramirez was not detained at the border, and he was neither placed into expedited removal proceedings nor held pending the outcome of such proceedings.
36. He has been living in the United States since his entry, and he has made every effort to abide by the laws of this country.

37. Nonetheless, Mr. Ramirez was recently detained – without any clear rationale provided. In addition, he has filed a request for a bond hearing before the Immigration Court. However, bond was denied under a novel interpretation by DHS and DOJ that all individuals who entered the United States unlawfully are considered “applicants for admission” and therefore subject to mandatory detention. This includes individuals who have been in the United States for several years.
38. Mandatory detention for all applicants has only been the official policy of the Department of Homeland Security (“DHS”) since July 8, 2025, when Acting Director of U.S. Immigration and Customs Enforcement, Todd M. Lyons, issued an internal memorandum explaining that the agency had “revisited its legal position.”¹ See *Martinez v. Hyde*, No. CV 25-11613-. BEM, 2025 WL 2084238.
39. Recently, the BIA, a part of the Executive Office for Immigration Review (“EOIR”), which operates under the DOJ’s authority, has agreed with the interpretation in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). It should be noted that one of the measures of the current administration was to reduce the number of judges at the BIA from 28 to 15, ensuring that most of the judges currently serving on the board were appointed by the current presidential administration, either during this term or in the prior one.²

¹ The existence of the memorandum was first reported by the Washington Post on July 14, 2025. Maria Sacchetti & Carol D. Leonnig, ICE declares millions of undocumented immigrants ineligible for bond hearings ... The memorandum itself was subsequently leaked by legal advocacy groups. ... The admitted novelty of the Government’s legal argument may shed some light on why the Petitioner and Court had such a difficult time recognizing it at first blush.] DHS, in coordination with the Department of Justice (DOJ), has revisited its legal position on detention and release authorities. DHS has determined that [section 1225] of the Immigration and Nationality Act (INA), rather than [section 1226], is the applicable immigration detention authority for all applicants for admission

² *Reducing the Size of the Board of Immigration Appeals*, 90 Fed. Reg. 15,525 (Apr. 14, 2025); also Adriel Orozco, *While Federal Firings Focus on Immigration Processing, Funding for Immigration Enforcement Expands*, AM.

40. Here, the DOJ is part of this process, and the internal memorandum discussing the change in interpretation indicates that the decision to strip immigration judges of jurisdiction over bond hearings was made “in coordination with the DOJ,” affirming that section 1225 “is the applicable immigration detention authority for all applicants for admission.”³ Furthermore, former immigration judges have reported that they were “told to rule in a certain way” by superiors, and there was “pressure from above.”⁴
41. Regardless of the reasons for the change in interpretation by both the DHS and the DOJ, this change does not align with the statute, the jurisprudence, the overall structure of the statute, decades of practice and understanding by Immigration Judges and the agencies, the logic of the immigration system, and the protections established in the Constitution. **In other words, Respondents’ interpretation violates federal law and due process protections.**
42. **First**, Respondents’ proposed interpretation, which is currently being adopted in Immigration Courts to deny noncitizens the right to a bond hearing, is contrary to the plain text of the law. As explained by the Massachusetts District Court in *Aguiriano Romero v. Hyde*, No. 25-cv-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025), § 1225(b)(2)(A) applies only when three distinct conditions are met: (1) an examining immigration officer determines that the person is an “applicant for admission”; (2) the person is “seeking admission”; and (3) the officer concludes that the individual is “not clearly and beyond a doubt entitled to be admitted.”

IMMIGRATION COUNCIL (Mar. 6, 2025), <https://www.americanimmigrationcouncil.org/blog/federal-firings-immigration-processing-enforcement-expands/>

³ See *Diaz Martinez*, 2025 WL 2084238, at *4 & nn.10–11 (citing Acting ICE Director Todd M. Lyons’s July 8, 2025 memorandum, “Interim Guidance Regarding Detention Authority for Applicants for Admission”).

⁴ Oscar Margain, *Fired immigration judges describe threat to judicial independence from Justice Dept.*, NBC BOSTON, <https://www.nbcboston.com/news/local/fired-us-immigration-judge-interviews/3776340/> (July 25, 2025) [<https://perma.cc/G6FL-8D73>].

Id. (quoting *Diaz Martinez*, 2025 WL 2084238, at 3), because “examination” refers to the specific legal process applicable at ports of entry. 8 C.F.R. § 235.1.

43. The proposed interpretation of the law by the Respondents also proposes that the terms “applicant for admission” and “seeking admission” are synonymous, when they are not. In *Garcia Cortes v Noem*, the Court held that “seeking admission” implies present-tense action, and without it, Section 1225(b)(2)(A) could not apply. *Garcia Cortes v. Noem*, No. 1:25-cv-02677, (D. S.D. 2025) (slip op.). An “applicant for admission” refers to a noncitizen who is present in or arriving at the United States and is undergoing inspection by an immigration officer to determine whether they are clearly entitled to enter. *See* 8 U.S.C. § 1225(a)(3), (b)(2)(A); 8 C.F.R. § 235.1. In contrast, the phrase “seeking admission” is broader and describes the act or intent of requesting entry, which may occur even while the individual is outside the United States, such as by applying for a visa at a consulate or preparing to present at a port of entry. *See Matter of Lemus-Losa*, 25 I. & N. Dec. 734, 741 (BIA 2012). As the court explained in *Diaz Martinez*, Congress’s decision to refer to “aliens ... who are applicants for admission or otherwise seeking admission,” 8 U.S.C. § 1225(a)(3), shows that the two categories are not coterminous. *Diaz Martinez v. Hyde*, No. 25-cv-10924-BEM, 2025 WL 2084238. Reading them as synonymous would erase this textual distinction and expand § 1225(b)(2)(A) far beyond its intended scope, encompassing individuals who have long resided in the United States and are not presently seeking to enter, such as the Petitioner here.
44. Thus, DHS’s and the DOJ’s selective reading of the statute – which disregards its “seeking admission” language – violates the rule against surplusage and undermines the plain meaning of the text. *See United States ex rel. Polansky v. Exec. Health Res., Inc.*, 599 U.S. 419, 432

(2023) (“[E]very clause and word of a statute’ should have meaning.”), quoting *Montclair v. Ramsdell*, 107 U.S. 147, 152 (1883); *United States v. Abbas*, 100 F.4th 267, 283 (1st Cir. 2024) (“We begin, as always, with the text of the statute’ and read it ‘according to its plain meaning at the time of enactment,’” quoting *United States v. Winczuk*, 67 F.4th 11, 16 (1st Cir. 2023), cert. denied, 145 S. Ct. 319 (2024)).

45. **Second**, the interpretation used by Respondents also conflicts with the general structure of the statute. If Respondents’ interpretation were deemed correct, it would render significant portions of 8 U.S.C. § 1226 meaningless, violating one of the most basic canons governing the interpretation of federal statutes, which provides that a statute “should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant ...” *Corley v. United States*, 556 U.S. 303, 314 (2009) (internal quotations omitted); *Shulman v. Kaplan*, 58 F.4th 404, 410-11 (9th Cir. 2023). “This principle ... applies to interpreting any two provisions in the U.S. Code, even when Congress enacted the provisions at different times.” *Bilski v. Kappos*, 561 U.S. 593, 607-08 (2010).
46. Here, the DOJ and DHS’s position is that Petitioner is subject to the mandatory detention provision, and so he should be detained until the finality of his removal proceedings without the opportunity to have a bond hearing. If their interpretation of § 1225 is correct and this section’s mandatory detention provisions apply to all noncitizens present in the United States who have not been admitted, it would render superfluous provisions of § 1226 that apply to certain categories of inadmissible noncitizens who have committed specified criminal offenses. See § 1226(c)(1)(A), (D), (E); *Shulman v. Kaplan*, 58 F.4th 404, 410–11 (9th Cir. 2023); *Torres v. Barr*, 976 F.3d 918, 930 (9th Cir. 2020) (en banc). Under Respondents’

proposed interpretation, which is based on a recent change in DHS's policies, § 1226(c)(1)(E)'s mandated detention for inadmissible noncitizens who are implicated in an enumerated crime, including those "present in the United States without being admitted or paroled," would be meaningless and superfluous because "all noncitizens who have not been admitted" would already be governed by § 1225's mandatory detention authority. *See Shulman*, 58 F.4th at 410-11. *See also Corley v. United States*, 556 U.S. 303, 314 n.5 (2009) (explaining that seemingly conflicting statutes read in isolation can be reconciled if read in their broader context, which includes observing the "antisuperfluousness" canon).

47. The Supreme Court's decision in *Jennings* likewise supports harmonizing §§ 1225 and 1226 in a manner contrary to Respondents' position. The Court described § 1225 as part of the process that "generally begins 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). In contrast, the Court explained that § 1226 governs "the process of arresting and detaining" noncitizens who are living "inside the United States" but "may still be removed," including those "who were inadmissible at the time of entry." *Id.* at 288. The Court summarized the distinction succinctly: "U.S. immigration law authorizes the Government to detain certain [noncitizens] seeking admission into the country under §§ 1225(b)(1) and (b)(2). It also authorizes the Government to detain certain [noncitizens] already in the country pending the outcome of removal proceedings under §§ 1226(a) and (c)." *Id.* at 289.
48. Notably, several of the exceptions in § 1226(c) that would be rendered superfluous under the IJ's interpretation of §§ 1225 and 1226 were only recently enacted by Congress in the Laken

Riley Act (“LRA”). “When Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect.” *Stone v. INS*, 514 U.S. 386, 397 (1995) (citation omitted). Enacted in January 2025, the LRA amended multiple INA provisions, including §§ 1226 and 1225. See LRA, Pub. L. No. 119-1, 139 Stat. 3 (2025). Pertinent here, the LRA added a new category of noncitizens to § 1226(c)’s mandatory detention authority—those deemed inadmissible, including for being “present in the United States without being admitted or paroled,” who have been arrested, charged with, or convicted of certain crimes. 8 U.S.C. § 1226(c)(1)(E); LRA, Pub. L. No. 119-1. By specifically excepting these criminally implicated inadmissible noncitizens from § 1226(a)’s default discretionary detention framework, Congress necessarily left all other inadmissible noncitizens—those without the specified criminal involvement—subject to § 1226(a). See *Jennings*, 583 U.S. at 289; *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010).

49. **Third**, the legislative history also shows that Respondents’ interpretation directly conflicts with Congress intent when creating the statute, as well as all the changes made after its promulgation. Congress enacted the LRA in the context of the longstanding agency practice of applying § 1226(a) to inadmissible noncitizens already residing in the country. Another “customary interpretive tool” is the principle that “[w]hen Congress adopts a new law against the backdrop of a ‘longstanding administrative construction,’” courts “generally presume[] the new provision should be understood to work in harmony with what has come before.” *Monsalvo Velazquez v. Bondi*, 604 U.S. ___, 145 S. Ct. 1232, 1242 (2025) (quoting *Haig v. Agee*, 453 U.S. 280, 297–98 (1981)). In *Monsalvo Velazquez*, the Court emphasized that when a statute is “susceptible” to more than one reasonable interpretation, courts should adopt the

reading that is “consistent” with the statute’s “longstanding administrative construction.” *Id.* Congress’s amendments to § 1226(c) in the LRA were made with full awareness of decades of agency practice treating inadmissible noncitizens – such as Mr. Ramirez – under § 1226(a)’s discretionary detention framework. Congress, therefore, presumably intended to preserve “the same understanding” of the statute as had been consistently applied by the agency. *Id.*

50. The legislative history of § 1226 reinforces that it governs the detention of noncitizens – like Mr. Ramirez – who were found in the United States after not having applied for admission. Prior to the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act (“IIRIRA”), the predecessor to § 1226(a) governed deportation proceedings for all noncitizens arrested within the United States. *See* 8 U.S.C. § 1252(a)(1) (1994) (“Pending a determination of deportability ... any [noncitizen] ... may, upon warrant of the Attorney General, be arrested and taken into custody.”); *Hose v. INS*, 180 F.3d 992, 994 (9th Cir. 1999) (noting that a “deportation hearing” was the “usual means” of proceeding against a noncitizen physically present in the United States). Like § 1226(a), the predecessor statute authorized discretionary release on bond. *See* 8 U.S.C. § 1252(a)(1) (1994). When Congress enacted IIRIRA, it expressly stated that § 1226(a) “restates the current provisions in [the predecessor statute] regarding the authority of the Attorney General to arrest, detain, and release on bond” a noncitizen “who is not lawfully in the United States.” H.R. Rep. No. 104-469, pt. 1, at 229; *see also* H.R. Rep. No. 104-828, at 210. Because noncitizens in Mr. Ramirez’s position were entitled to discretionary detention under the predecessor statute, and Congress confirmed that IIRIRA did not narrow that authority, § 1226 should likewise be interpreted to allow discretionary release on bond for similarly situated noncitizens.

51. **Fourth**, Respondents’ interpretation of § 1226 is undermined by the DHS’s longstanding practice of treating noncitizens taken into custody while residing in the United States—including those who were initially found inadmissible upon inspection but released into the country with the government’s acquiescence and who have committed no crimes since—as detained under § 1226(a). *See Loper Bright Enter. v. Raimondo*, 603 U.S. 369, 386 (2024). “[T]he longstanding practice of the government—like any other interpretive aid—can inform [a court’s] determination of what the law is.” *Id.* (internal quotations omitted, second brackets in original). The Supreme Court has further recognized that deference to executive interpretations of federal statutes is “especially warranted when [the interpretation] was issued roughly contemporaneously with enactment of the statute and remained consistent over time.” *Id.* The subsequent shift toward a regime that seeks to expedite the removal of noncriminal noncitizens who have resided in the country for several years is insufficient to support a good-faith belief that the change in interpretation rests on anything other than political convenience to justify the government’s concerning actions.
52. Finally, the interpretation of the DOJ and DHS here directly violates the First Circuit finding in *Hernandez Lara v. Barr*, No. 19-1524 (1st Cir. 2020), which decided that in order for the government to detain a noncitizen under 1226(a), “due process requires the government to either (1) prove by clear and convincing evidence that she poses a danger to the community or (2) prove by the preponderance of the evidence that she poses a flight risk.” *Hernandez Lara v. Barr*.
53. Therefore, because Mr. Ramirez’s presence in the United States since his entry in 2003 — following service of his Notice to Appear — has been under § 1226, the interpretation applied

by Respondents is unlawful. Both the BIA's jurisdictional determination and Mr. Ramirez's continued detention, absent a hearing to determine whether he poses a danger to persons or property or is likely to appear for future proceedings, are contrary to the laws of the United States.

COUNT TWO

Violation of Fifth Amendment Protections and Right to Due Process

54. Mr. Ramirez's detention by DHS violates his rights under the Due Process Clause of the Fifth Amendment to the United States Constitution. The allegations in the above paragraphs are realleged and incorporated herein. Immigration detention violates due process if it is not reasonably related to the purpose of ensuring a noncitizen's removal from the United States. *See Zadvydas v. Davis*, 533 U.S. 678, 690-92, 699-700 (2001); *Jackson v. Indiana*, 406 U.S. 715, 738 (1972). Where removal is not reasonably foreseeable, detention cannot be reasonably related to the purpose of effectuating removal and is unlawful. *See id.* at 699-700.
55. The Supreme Court has also established the principle that noncitizens in deportation or removal proceedings are just as entitled to due process protections as anyone else. *See Zadvydas*, 533 U.S. at 690 (2001) ("A statute permitting indefinite detention of an alien would raise a serious constitutional problem. The Fifth Amendment's Due Process Clause forbids the Government to 'depriv[e]' any 'person . . . of . . . liberty . . . without due process of law.'")
56. In *Jennings v. Rodriguez*, the Supreme Court made a clear distinction between noncitizens who are detained while entering the country and noncitizens who are already present in the United States. 583 U.S. at 287. The opinion of the Supreme Court recognizes that "**§ 1226 applies to aliens already present in the United States. . . .**" and that "**§ 1226(a) authorizes the**

Attorney General to arrest and detain an alien ‘pending a decision on whether the alien is to be removed from the United States.’” *Id.* (emphasis added). As long as the detained alien is not covered by § 1226(c), the Attorney General “may release” the alien on “bond . . . or conditional parole.” § 1226(a). Furthermore, federal regulations provide that aliens detained under § 1226(a) receive bond hearings at the outset of detention. *See* 8 CFR §§ 236.1(d)(1), 1003.19.

57. The interpretation that DOJ and DHS are currently using is in egregious violation of the constitutional protection set in the Due Process clause, as it allows the government to detain noncitizens without providing any recourse for them to question their detention, and more importantly, does not provide any obligation for the government to justify such detention. The ultimate question is whether noncitizens who have resided in the United States for several years are entitled to fundamental due process protections, including a hearing before an independent adjudicator to determine the lawfulness of their detention. As supported in this brief, the legal analysis unquestionably supports the conclusion that they are entitled to such rights. Beyond the technical legal analysis, however, it is also a matter of basic fairness and common sense: all individuals, regardless of immigration status, are entitled to fundamental protections of liberty.

Were it true that “arriving” noncitizens have no due process rights, it would mean that such individuals – including those living freely among us on parole – could “be subjected to the punishment of hard labor without a judicial trial.” *Clerveaux v. Searls*, 397 F. Supp. 3d 299, 316 (W.D.N.Y. 2019) (quoting *Zadvydas v. Davis*, 533 U.S. 678, 704 (2001) (Scalia, J., dissenting)). “And it would mean that a noncitizen living here on parole could be taken into custody and beaten by local police without any violation of the Fourth

Amendment. That cannot be the law.” *Mata Velasquez v. Kurzdorfer*, No. 25-CV-493 at *16 (W.D.N.Y. July 16, 2025).

58. The Due Process Clause protection to noncitizens has long been supported by the Supreme Court, indicating that noncitizens have fewer protections in their *initial entry*, but have full protections of the Due Process Clause once they are already in the United States. *See Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103 (2020); *see also Landon v. Plasencia*, 459 U.S. 21, 32 (1982). In *Thuraissigiam*, the Court reinforces the limited protections for individuals seeking initial entry to the United States. *See Thuraissigiam*, 591 U.S. at 107. (emphasis added). But they create a clear distinction between noncitizens who are trying to enter the country from those who have already entered the country and have established ties to the U.S. *Id.* The Court concludes that “an alien who is detained shortly after unlawful entry cannot be said to have ‘effected an entry’ ... For due process purposes, he stands on the threshold of initial entry, and his constitutional rights are limited accordingly.” *Id.* at 139-140. The Supreme Court in *Thuraissigiam* reaffirmed *Landon v. Plasencia* and *Zadvydas* stating that “while aliens who have established connections in this country have due process rights in deportation proceedings,” the same is not true for an alien at the threshold of initial entry. *Id.* at 107.

59. Therefore, there is no question that the Supreme Court has long recognized a *distinction* between those who are arrested at the border trying to enter the country and those arrested while in the country. Respondents’ interpretation ignores the well-established “distinction between an alien who has effected an entry into the United States and one who has never entered [that] runs throughout immigration law.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). “[O]nce an alien enters the country, the legal circumstance changes, for the Due Process Clause

applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.” *Id.*

60. Even in *Thuraissigiam*, the Supreme Court reinforced the limited protections for individuals seeking initial entry to the United States, but it creates a clear distinction between noncitizens who are trying to enter the country from those who have already entered the country and established ties to the U.S. *DHS v. Thuraissigiam*, 591 U.S. 104, 114 (2020). The Supreme Court concludes that “an alien who is detained shortly after unlawful entry cannot be said to have ‘effected an entry’... For due process purposes, he stands on the threshold of initial entry, and his constitutional rights are limited accordingly.” *Id.* at 114. However, for individuals already in the United States, the Court in *Thuraissigiam* reaffirmed *Landon v. Plasencia*, 459 U.S. 21, 32 (1982) and *Zadvydas*, stating that “while aliens who have established connections in this country have due process rights in deportation proceedings, the same is not true for an alien at the threshold of initial entry” *Id.* at 113.

61. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects.” *Zadvydas* at 690. Being free from physical detention is “the most elemental of liberty interests.” *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004) “[W]hile [DHS] might want to enforce this country’s immigration laws efficiently, it cannot do that at the expense of fairness and due process.” *Ceesay v. Kurzdorfer*, No. 25-CV-267, 2025 WL 1284720, at *1 (W.D.N.Y. May 2, 2025). Also, “there is something fundamentally unfair about the government’s changing the rules by fiat simply because it wants to. That is arbitrary by definition.” *Mata Velasquez*, 2025 WL 1953796 at *6. “Luring noncitizens here, paroling them for a period of time, and then telling them ‘never

mind' is just plain wrong—made even worse when the noncitizens are detained while their cases are heard. And a change in administration does not justify or excuse such fundamental unfairness.” *Id.* at *25 n.6.

62. A basic principle—that individuals placed at liberty are entitled to due process before the government again imprisons them. Mr. Ramirez was not detained while crossing the border, but while living in the United States. He has committed no disqualifying crime. The government may not unilaterally take away his liberty.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

- (1) Assume jurisdiction over this matter.
- (2) Issue an Order to Show Cause, pursuant to 28 U.S.C. § 2243, ordering Respondents to show cause why the Petition should not be granted within three days.
- (3) Declare that Petitioner’s detention violates the Due Process Clause of the Fifth Amendment and federal law.
- (4) Issue a Restraining Order preventing Petitioner from being transferred out of the state of Texas for the duration of these proceedings.
- (5) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately.
- (6) Award Petitioner attorney’s fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
- (7) Grant any further relief this Court deems just and proper.

Date: January 6, 2026

Respectfully submitted,

/s/ Fernanda Romeiro

Fernanda Romeiro, Esq.

Counsel for Petitioner

Bar No. 708445 (pro hac vice pending)

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CERTIFICATE OF SERVICE

I, Fernanda Romeiro, hereby certify that this document filed through the CM/ECF system will be sent electronically to the registered participants as identified on the NEF (NEF), and paper copies will be sent to those indicated as non-registered participants.

Dated: January 6, 2026

/s/ Fernanda Romeiro
Fernanda Romeiro, Esq.

