UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

JOSE MANUEL GALLARDO BRITO,

Petitioner,

CASE No.: 5:26-cv-00079

v.

ROSE THOMPSON, Warden Karnes County Immigration Processing Center

KRISTI NOEM, Secretary of the Department of Homeland Security;

PAMELA BONDI, Attorney General of The United States;

TODD M. LYONS, Acting Director of U.S. Immigration and Customs Enforcement; and

MIGUEL VERGARA, San Antonio Field Office Director, U.S. Immigration and Customs Enforcement.

Respondents.

VERIFIED PETITION FOR A WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241, AND REQUEST FOR ORDER TO SHOW CAUSE

Petitioner, **JOSE MANUEL GALLARDO BRITO**, by and through undersigned counsel, petitions this Court for a writ of habeas corpus under 28 U.S.C. § 2241 to remedy his unlawful detention in violation of the Constitution and laws of the United States.

INTRODUCTION

Petitioner Jose Manuel Gallardo Brito is a Cuban national with no criminal history who has lived in the United States since August 2022. He has a pending asylum application before the Immigration Court and is the beneficiary of a Form I-130, Petition for Alien Relative, pending with U.S. Citizenship and Immigration Services. On or about December 11, 2025, Petitioner was stopped by local law enforcement in Miami, Florida for a routine traffic matter and was taken into immigration custody as a collateral consequence of the traffic stop. He is now detained at the Karnes County Immigration Processing Center in Karnes City, Texas, where he remains confined under a categorical "no-bond" policy that Respondents apply pursuant to the Board of Immigration Appeals' September 5, 2025 decision in *Matter of Yajure Hurtado*. This Petition challenges Respondents' continued detention of Petitioner without an individualized bond hearing as unlawful and unconstitutional. Petitioner therefore seeks a writ of habeas corpus ordering his immediate release, or at minimum, a prompt individualized bond hearing before a neutral Immigration Judge at which the government bears the burden to justify continued detention.

JURISDICTION

1. This action arises under the United States Constitution, the Immigration and Nationality Act of 1952, as amended ("INA"), 8 U.S.C. § 1101 *et seq.*, and the Administrative Procedure Act ("APA"), 5 U.S.C. § 701 *et. seq.*

2. This Court has subject matter jurisdiction over this Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 (habeas corpus authority); Article I, Section 9, Clause 2 of the United States Constitution (Suspension Clause), 28 U.S.C. § 1331 (federal question); and the Fifth Amendment to the United States Constitution (Due Process Clause of the U.S. Constitution).

3. This Court has authority to grant relief under 28 U.S.C. § 2241, the All Writs Act, 28 U.S.C. § 1651, and the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*

4. Federal district courts have jurisdiction to hear habeas claims brought by noncitizens challenging the lawfulness and the constitutionality of their detention where such claims are independent of any final order of removal. *See Demore v. Kim*, 538 U.S. 510, 516–17 (2003); *Zadvydas v. Davis*, 533 U.S. 678 (2001); *Jennings v. Rodriguez*, 583 U.S. 281, 291–95 (2018); *Buenrostro-Mendez v. Bondi,* No. CV H-25-3726, 2025 WL 2886346, at *1 (S.D. Tex. Oct. 7, 2025) (Rosenthal, J).

VENUE

5. Venue is proper in the district of confinement. *Rumsfeld v. Padilla,* 542 U.S. 426, 442 (2004). Petitioner is currently in the custody of ICE at the Karnes County Immigration Processing Center located in Karnes City, Texas, which is within the jurisdiction of this District. ***See,* Ex. 1, DHS/ICE Online Detainee Locator information.**

6. Venue is proper in this District under 28 U.S.C. § 1391(e), because Respondents are officers, employees, or agencies of the United States, a substantial part of the events or omissions giving rise to his claims occurred in this district, and no real property is involved in this action.

REQUIREMENTS OF 28 U.S.C. § 2243

7. The Court must grant the petition for writ of habeas corpus or issue an order to show cause ("OSC") to the respondents "forthwith," unless the Petitioner is 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.*

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

PARTIES

9. Petitioner **Jose Manuel Gallardo Brito** is a native and citizen of Cuba. Petitioner is currently in the physical and legal custody of Respondents at the Karnes County Immigration Processing Center in Karnes City, Texas.

10. Respondent **Rose Thompson** is sued in her official capacity as the Warden of the Karnes County Immigration Processing Center, where Petitioner is currently detained.

11. Respondent **Kristi Noem** is the Secretary of the United States Department of Homeland Security ("DHS"). In that capacity, she exercises ultimate control and supervisory authority over all components and personnel of DHS, including U.S. Immigration and Customs Enforcement ("ICE"). She is responsible for the administration and enforcement of the nation's immigration laws pursuant to 8 U.S.C. § 1103(a). Accordingly, she is the Petitioner's ultimate legal custodian, as Petitioner's detention is maintained under DHS authority.

12. Respondent **Pamela Bondi** is the Attorney General of the United States. In that capacity, she administers the Department of Justice ("DOJ"), including the Executive Office for Immigration Review ("EOIR"), the Board of Immigration Appeals ("BIA"), and the Immigration Courts. She is responsible for the administration and enforcement of the nation's immigration laws pursuant to 8 U.S.C. § 1103(g). Accordingly, she is one of Petitioner's legal custodians.

13. Respondent **Todd M. Lyons** is the Acting Director of U.S. Immigration and Customs Enforcement ("ICE"), a component agency within DHS. In that capacity, he exercises authority over ICE operations nationwide, including enforcement, detention, and removal functions. Accordingly, he is one of Petitioner's legal custodians, as he has direct oversight of the agency responsible for Petitioner's custody.

14. Respondent **Miguel Vergara** is the San Antonio Field Office Director for U.S. Immigration and Customs Enforcement ("ICE"), which has jurisdiction over the Karnes County Immigration Processing Center in Karnes City, Texas where Petitioner is detained. In that capacity, he exercises day-to-day supervisory authority over custody determinations and the conditions of detention within his jurisdiction. Accordingly, he is a proper Respondent as one of Petitioner's legal custodians.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

15. Petitioner Jose Manuel Gallardo Brito (Mr. Gallardo Brito) is a native and citizen of Cuba.

16. On March 18, 2022, Petitioner entered the United States without inspection and was encountered by immigration officials. Petitioner has remained continuously present in the United States since that time.

17. On March 19, 2022, Petitioner was released from immigration custody with a Form I-220A, Order of Release on Recognizance ("OREC"). ***See,* Ex. 2, Form I-220A.**

18. On March 20, 2022, the Department of Homeland Security ("DHS") issued a Notice to Appear ("NTA") charging Petitioner with removability under INA § 212(a)(6)(A)(i), as a noncitizen present in the United States without being admitted or paroled. ***See,* Ex. 3, Notice to Appear.**

19. Petitioner has no criminal history in the United States or anywhere else.

20. Petitioner is a resident of Miami, Florida, where he resides with his lawful permanent resident ("LPR") spouse, Damisel Morales Bombino.

21. On September 1, 2022, DHS issued an Amended Notice to Appear charging Petitioner with removability under INA § 212(a)(6)(A)(i), as a noncitizen present in the U.S. without being admitted or paroled. ***See,* Ex. 4, Amended Notice to Appear.**

22. On September 11, 2022, DHS filed the Notice to Appear with the Executive Office for Immigration Review ("EOIR"), thereby commencing removal proceedings.

23. On March 13, 2023, Petitioner filed a timely Form I-589, Application for Asylum and for Withholding of Removal, with the Immigration Court. That application remains pending before the court.

24. On June 16, 2025, U.S. Citizenship and Immigration Services ("USCIS") issued Petitioner a renewed Employment Authorization Document valid through June 26, 2030. ***See,* Ex. 5, USCIS Employment Authorization Document Renewal.**

25. On July 31, 2025, Petitioner's LPR spouse filed a Form I-130, Petition for Alien Relative, on his behalf pursuant to INA § 203(a)(2)(A). ***See,* Ex. 6, USCIS Receipt Notice.**

26. On or about December 11, 2025, Petitioner was stopped by local law enforcement in Miami, Florida for a routine traffic matter and was taken into immigration custody as a collateral consequence of the traffic stop.

27. Following his arrest, Petitioner was transferred from Miami, Florida to the Karnes County Immigration Processing Center in Karnes City, Texas, where he remained detained.

28. Petitioner's continued detention has caused significant harm to him and his family.

29. Petitioner has not been afforded any meaningful opportunity to request release from detention before a neutral decisionmaker. He has been denied an individualized custody determination despite possessing a fundamental liberty interest protected by statute and the Constitution.

30. Petitioner remains separated from his wife, family, and community support network. This prolonged separation has caused substantial economic, emotional, and psychological hardship.

31. Petitioner's detention has also significantly impaired his ability to defend against removal, including by restricting communication with witnesses, impeding the collection of evidence, and limiting access to and effective communication with legal counsel.

32. On September 5, 2025, the Board of Immigration Appeals ("BIA") issued its precedential decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), holding that noncitizens who entered the United States without inspection and are later taken into immigration custody are categorically ineligible for release on bond under INA § 236(a).

33. Until that decision, the BIA's settled position—reflected in its most recent precedential bond decision—was that immigration judges possessed discretionary authority under INA § 236(a) to grant release on bond following an individualized custody hearing, absent a disqualifying criminal history or findings of flight risk or danger. *See Matter of Akhmedov*, 29 I. & N. Dec. 166 (BIA June 30, 2025).

34. For decades ICE likewise treated noncitizens apprehended from within the United States as detained pursuant to 8 U.S.C. § 1226(a), and therefore eligible for individualized bond determinations. *Rocha Rosado v. Figueroa,* No. CV 25-02157, 2025 WL 2337099 (D. Arizona Aug. 11, 2025).

35. That longstanding interpretation abruptly changed on July 8, 2025, when ICE issued internal Interim Guidance reclassifying most noncitizens who entered without inspection as subject to mandatory detention under 8 U.S.C. § 1225 rather than discretionary detention under § 1226(a). ***See,* Ex. 7, Interim Guidance (July 8, 2025).** Under this guidance, ICE now treats only noncitizens previously admitted to the United States as eligible to request bond, while all others are treated as ineligible for bond subject to continued detention absent discretionary parole. *See id.*

36. As a direct result of *Matter of Yajure Hurtado* and Respondents' application of that decision, Petitioner is being detained under a categorical no-bond rule that treats him as ineligible for an individualized bond hearing. Petitioner therefore remains detained away from his family, counsel, and community support system, continuing to suffer the harms described above.

37. Petitioner's continued detention is not the result of any individualized determination that he is a danger to the community or a flight risk but instead flows solely from the categorical no-bond rule announced in *Matter of Yajure Hurtado*.

38. This petition followed.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

39. There is no statutory requirement that a noncitizen exhaust administrative remedies before challenging immigration detention through a petition for writ of habeas corpus. Congress imposed an exhaustion requirement only for judicial review of final orders of removal. *See* 8 U.S.C. § 1252(d)(1); *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.").

40. The Supreme Court has further recognized that exhaustion is not required where a plaintiff "may suffer irreparable harm if unable to secure immediate judicial consideration of [the] claim." *McCarthy v. Madigan*, 503 U.S. 140, 147 (1992). Prolonged civil detention without access to a bond hearing constitutes ongoing and irreparable deprivation of physical liberty.

41. Even where exhaustion is considered as a prudential matter, it is unnecessary when pursuit of administrative remedies would be futile or where the agency has predetermined the dispositive issue. *McCarthy v. Madigan*, 503 U.S. 144, 147-48 (1992) (holding that an administrative remedy is inadequate when it "lacks institutional competence to resolve the particular type of issue presented, such as the constitutionality of a statute" or where the "challenge is to the adequacy of the agency procedure itself").

42. In this case, exhaustion would be futile, because the Board of Immigration Appeals ("BIA") has issued a binding precedential decision in *Matter of Yajure Hurtado,* 29 I&N Dec. 216 (BIA 2025), holding that immigration judges lack authority to grant bond to noncitizens deemed subject to detention under 8 U.S.C. § 1225(b)(2)(A), regardless of the length of time the noncitizen has resided in the United States. As a result of that decision, immigration judges have indicated that they lack jurisdiction to consider bond and remain bound by *Yajure Hurtado*, notwithstanding contrary judicial rulings addressing the statutory distinction between §§ 1225 and 1226. Because immigration judges and the BIA are bound by that precedential decision, no administrative process exists through which Petitioner could obtain the relief sought.

LEGAL FRAMEWORK

DUE PROCESS CLAUSE

43. "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)). "The Due Process Clause applies to all persons within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (citation modified). "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 [of the Fifth Amendment] protects." *Id.* at 690.

44. The Due Process Clause requires that the deprivation of Petitioner's liberty must be narrowly tailored to serve a compelling government interest. *See, Reno v. Flores*, 507 U.S. 292, 301-02 (1993) (holding that due process "forbids the government to infringe certain 'fundamental' liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest").

45. In the immigration context, the Supreme Court has recognized only two legitimate 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.

46. Procedural due process requires, at minimum, "the opportunity to be heard at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). In determining what process is due, courts consider: (1) the private interest affected by the

government action; (2) the risk of an erroneous deprivation of that interest, and the extent to which that risk could be reduced by additional safeguards; and (3) the government's interest, including the fiscal and administrative burdens that additional procedures would entail. *Id.* at 335.

DETENTION PROVISIONS UNDER THE IMMIGRATION AND NATIONALITY ACT

47. The Immigration and Nationality Act ("INA"), codified at Title 8 of the United States Code, Section 1101 *et seq.*, governs the authority of the United States Government to detain noncitizens during removal proceedings.

48. The INA authorizes the detention of noncitizens under four distinct statutory provisions:

1) **Discretionary Detention. Section 236(a) of the INA, 8 U.S.C. § 1226(a)**, generally governs the detention of noncitizens placed in regular, non-expedited removal proceedings and permits the release of noncitizens not subject to mandatory detention on bond or on their own recognizance.

2) **Mandatory Detention of Certain Criminal Noncitizens. Section 236(c) of the INA, 8 U.S.C. § 1226(c)**, generally requires the mandatory detention of noncitizens who are removable on the basis of specified criminal or terrorist-related grounds after their release from criminal custody.

3) **Mandatory Detention of "Applicants for Admission". Section 235(b) of the INA, 8 U.S.C. § 1225(b)**, generally mandates the detention of certain noncitizen applicants for admission, including noncitizens arriving at a port of entry and those who have not been admitted or paroled into the U.S. and are apprehended shortly after entering the country.

4) **Post-Removal-Order Detention. Section 241(a) of the INA, 8 U.S.C. § 1231(a)**, generally requires the detention of noncitizens subject to a final removal order during the 90-day removal period and authorizes continued detention of certain noncitizens beyond that period. *See* 8 U.S.C. § 1231(a)(2),(6).

49. This case concerns the detention provisions at 8 U.S.C. §§ 1225(b) and 1226(a). Both provisions were enacted as part of the Illegal Immigration Reform and Immigrant

Responsibility Act ("IIRIRA") of 1996, Pub. L. No. 104-208, Div. C, §§ 302-03, 110 Stat. 3009, 546, 3009-582 to 3009-583, 3009-585.[1]

50. Following IIRIRA's enactment, the Executive Office for Immigration Review ("EOIR") promulgated regulations clarifying that, in general, noncitizens who entered the United States without inspection and were later apprehended from within the country were detained under § 1226(a), not § 1225(b), once a warrant for arrest was issued. See *Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures*, 62 Fed. Reg. 10,312, 10,323 (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.") (emphasis added).

51. The legislative history of § 1226 confirms that Congress intended it to govern the detention of noncitizens apprehended from within the United States, including individuals deemed inadmissible at the border, released into the United States, and later taken into custody after residing in the country for a period of time. Prior to IIRIRA, the predecessor statute governing detention in deportation proceedings - former 8 U.S.C. § 1252(a)(1) (1994)[2] - authorized discretionary detention and release on bond for noncitizens arrested within the United States. Congress expressly stated that § 1226(a) "restates the current provisions" governing the Attorney General's authority 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.

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[1] Section 1226(a) was most recently amended in 2025 by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).

[2] 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. Immigration & Naturalization Serv.*, 180 F.3d 992, 994 (9th Cir. 1999) (noting a "deportation hearing" was the "usual means" of proceeding against an alien physically in the United States).

Because Congress declared the scope of detention authority unchanged, § 1226(a) must be interpreted to preserve discretionary bond eligibility for similarly situated noncitizens.

52. On September 5, 2025, the Board of Immigration Appeals issued its precedential decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), holding that noncitizens who entered the United States without inspection and are later taken into immigration custody are categorically ineligible for release on bond under § 1226(a).

53. That interpretation departs from decades of agency practice, governing regulations, and Supreme Court precedent recognizing that § 1226(a) authorizes discretionary detention and release on bond following an individualized determination of flight risk and danger.

54. In *Jennings v. Rodriguez*, the Supreme Court examined the statutory detention framework set forth in §§ 1225 and 1226. 583 U.S. 281, 287 (2018). The Court explained that § 1225(b) "applies primarily to aliens seeking entry into the United States," *id.* at 297, while § 1226 governs the detention of "aliens already present in the United States," *id.* at 303.

55. The Court further held that § 1226(a) establishes a default rule authorizing—but not requiring—the arrest and detention of such individuals during removal proceedings and expressly permits release on bond, except for the limited categories specified in § 1226(c) (criminal offenses or terrorist activities). *Id.* at 303. Federal regulations implementing § 1226(a) provide that noncitizens detained under that provision are entitled to bond hearings at the outset of detention. *Id.* at 306; *see* 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1).

56. *Jennings* thus confirms a clear statutory distinction between mandatory detention of arriving noncitizens seeking admission under § 1225(b) and discretionary detention of noncitizens already present in the United States under § 1226(a).

57. The BIA's interpretation in *Matter of Yajure Hurtado* is inconsistent with the plain text of § 1225(b)(2)(A), which mandates detention only "[i]n the case of an alien who is an applicant for admission" and who is "seeking admission" and "not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A).

58. The phrase "seeking admission" necessarily denotes a present-tense act, reflecting an ongoing attempt to enter the United States. See *Martinez*, 2025 WL 2084238, at *6; see also *Matter of M-D-C-V-*, 28 I.&N. Dec. 18, 23 (BIA 2020) ("the use of the present progressive tense 'arriving', rather than the past tense 'arrived', implies some temporal or geographic limitation"); *accord Lopez Benitez v. Francis,* 2025 WL 2371588, at *6-7 (S.D.N.Y. Aug. 13, 2025); *see also United States v. Wilson*, 503 U.S. 329, 333 (1992) ("Congress' use of verb tense is significant in construing statutes."); *Al Otro Lado v. McAleenan,* 394 F. Supp. 3d 1168, 1200 (S.D. Cal. 2019)(construing "is arriving" in INA § 235(B)(1)(A)(i) and observing that "[t]he use of the present progressive, like use of the present participle, denotes an ongoing process").

59. Accordingly, § 1225 applies to noncitizens currently seeking admission at the border or a point of entry, while § 1226 governs the detention of noncitizens already present in the United States. See *Jennings*, 583 U.S. at 303. The categorical no-bond rule announced in *Matter of Yajure Hurtado* impermissibly collapses this statutory distinction.

60. In interpreting a statute, "every clause and word . . . should have meaning." *United States ex rel. Polansky, M.D. v. Exec. Health Res., Inc.*, 599 U.S. 419, 432 (2023). Statutory language must also be read "in [its] context and with a view to [its] place in the overall statutory scheme." *Gundy v. United States*, 588 U.S. 128, 141 (2019).

61. The interpretation adopted in *Matter of Yajure Hurtado* violates these fundamental principles of statutory construction. It requires courts to disregard critical provisions of the INA and renders portions of the detention framework enacted by Congress superfluous. When Congress amends a statute, courts must presume that the amendment was intended to have "real and substantial effect." *Van Buren v. United States*, 593 U.S. 374, 393 (2021).

62. In January 2025, Congress enacted the Laken Riley Act (the "Act"), which amended several provisions of the INA, including §§ 1225 and 1226. *See* Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025). Relevant here, Congress added a new category of noncitizens subject to mandatory detention under § 1226(c): certain individuals already present in the United States who have been arrested for, charged with, or convicted of specified criminal offenses. See 8 U.S.C. § 1226(c)(1)(E). If, as the government contends, all noncitizens who entered without inspection are already subject to mandatory detention under § 1225(b) at any time, this amendment would serve no purpose. Congress's decision to expand § 1226(c) instead confirms that § 1226(a) provides the default rule of discretionary detention. See *Rodriguez v. Bostock*, No. 3:25-CV-05240-TMC, 2025 WL 1193850, at *28-29 (W.D. Wash. Apr. 24, 2025).

63. Moreover, "[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 enacted the Laken Riley Act against decades of consistent agency practice applying § 1226(a) to noncitizens like Petitioner, who are present in the United States but have not been admitted or paroled. See *Rodriguez*, 2025 WL 1193850, at *28-29; *Martinez* v. Hyde, No. 1:25-cv-11613, 2025 WL 2084238, at *4 (D. Mass. July 24, 2025); 62 Fed. Reg. 10312, 10323

(Mar. 6, 1997) ("Despite being applicants for admission, [noncitizens] who are present without having been admitted or paroled . . . will be eligible for bond and bond redetermination.").

64. Section 1226(a) applies by default to noncitizens detained "pending a decision on whether the alien is to be removed from the United States." Removal proceedings under § 1226(a) are conducted pursuant to § 1229a, which governs proceedings "deciding the inadmissibility or deportability of an alien." By contrast, § 1225(b) applies to noncitizens who are arriving at a port of entry or who are in the process of seeking admission to the United States.

65. Since the issuance of *Matter of Yajure Hurtado*, district courts across the country have repeatedly rejected the BIA's new interpretation of §§ 1225 and 1226. *See, e.g., Rodriguez v. Lara v. Bondi,* No. SA-25-CA-01581-XR (W.D. Tex. Dec. 16, 2025); *Hernandez Lopez v. Hardin*, No. 2:25-cv-830-KDC-NPM, 2025 WL 3022245 (M.D. Fla. Oct. 29, 2025); *Aguilar Guerra v. Joyce,* 2:25-cv-534-SDN, 2025 WL 2986316 (D. Maine Oct. 23, 2025); *Contreras Maldonado v. Cabezas,* No. 25-cv-13004, 2025 WL 2985256 (D. N.J. Oct. 23, 2025); *Gomez Garcia v. Noem,* No. 5:25-cv-02771-ODW (PDx), 2025 WL 2986672 (C.D. Cal. Oct. 22, 2025); *Loa Caballero v. Baltazar,* No. 1:25-cv-03120-NYW, 2025 WL 2977650 (C. Colo. Oct. 22, 2025); *Ochoa Ochoa v. Noem,* No. 25-CV-10865, 2025 WL 2938779 (N.D. Ill. Oct. 16, 2025); *N.A. v. Larose,* No. 25-cv-2384-RSH-BLM, 2025 WL 2841989 (S.D. Cal. Oct. 7, 2025); *Lopez-Arevalo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Sampiao v. Hyde*, 1:25-cv-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Pizarro Reyes v. Raycraft,* No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Alvarez Martinez v. Noem*, et al., 5:25-CV-01007-JKP (W.D. TX Sept. 8, 2025); *Mosqueda v. Noem*, No. 5:25-CV-02304-CAS (BFM), 2025 WL 2591539 (C.D. Cal. Sept. 8, 2025); *Garcia v. Noem,* No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Carmona-Lorenzo v. Trump*, No. 4:25-cv-3172, 2025 WL

2531521 (D. Neb. Sept. 3, 2025); *Fernandez v. Lyons*, No. 8:25-cv-506, 2025 WL 2531539 (D. Neb. Sept. 3, 2025); *Lopez-Campos v. Raycraft,* No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Kostak v. Trump,* No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Leal-Hernandez v. Noem,* No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Ramirez Clavijo v. Kaiser,* No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Samb v. Joyce,* No. 25Civ.6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Romero v. Hyde,* No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Reynosa Jacinto v. Trump*, et al, 4:25-cv-03161-JFB-RCC (D. Neb. August 19, 2025); *Aguilar Maldonado v. Olson*, et al, No. 25-cv-03142 SRNSGE, 2025 2374411 (D. Minn. August 18, 2025); *Arrazola-Gonzalez v. Noem,* No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Mohammed H. v. Trump*, No. 25-cv-1576 (JWB/DTS), 2025 WL 1334847 (D. Minn. May 5, 2025); *Rocha Rosado v, Figueroa*, 2:25-cv-02157, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025): *Martinez v. Hyde*, No. 1:25-cv-11613, 2025 WL 2084238 at *8 (D. Mass. July 24, 2025); *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).

66. This Court is not required—and should not—defer to the BIA's interpretation in *Matter of Yajure Hurtado*. The Supreme Court has made clear that "[c]ourts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority," and "may not defer to an agency interpretation of the law simply because a statute is ambiguous." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412 (2024). Applying that independent judgment, the Court need only follow the Supreme Court's analysis in *Jennings v. Rodriguez*, which held that

§ 1225 applies to noncitizens "seeking admission into the United States," while § 1226 governs detention of noncitizens "already present in the United States." 583 U.S. 281, 289, 303 (2018).

67. This Court retains jurisdiction under 28 U.S.C. § 2241 to determine the statutory authority governing Petitioner's detention and whether that detention is lawful. Challenges to detention without a bond hearing are collateral to removal proceedings and do not seek review of a removal order. See *Jennings v. Rodriguez*, 583 U.S. 281, 293–95 (2018); *Nielsen v. Preap*, 586 U.S. 392, 402 (2019) (recognizing a distinction between an initial detention decision and a decision denying a bond hearing); *see also Rodriguez v. Lara v. Bondi,* No. SA-25-CA-01581-XR, at *2 (W.D. Tex. Dec. 16, 2025); *Romero v. Hyde,* No. 25-11631-BEM, 2025 WL 2403827, at 5 (D. Mass. Aug. 19, 2025) ("[C]hallenging denial of a bond hearing is not the same thing as challenging the initial detention decision."); *Loa Caballero v. Baltazar,* No. 1:25-cv-03120-NYW, 2025 WL 2977650, at *5-6 (D. Colo. Oct. 22, 2025) (rejecting § 1252(b)(9) as a bar to habeas challenge to detention without bond); *Nava Hernandez v. Noem,* No. 1:25-cv-03094-CNS, 2025 WL 2996643, at * 4 (D. Colo. Oct. 24, 2025)(same).

CLAIMS FOR RELIEF

CLAIM ONE

VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT OF THE U.S. CONSTITUTION

68. Petitioner realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein.

69. The Fifth Amendment's Due Process Clause protects all persons within the United States from arbitrary deprivation of liberty, regardless of their immigration status. *Zadvydas*, 533 U.S. at 693; *Mathews v. Diaz*, 426 U.S. 67, 77 (1976). Freedom from physical restraint "lies at the heart of the liberty that the Due Process Clause protects." *Zadvydas*, 533 U.S. at 690.

70. There is no dispute that Respondents have deprived Petitioner of his liberty. Petitioner is detained without any opportunity to request a bond hearing or to obtain an individualized determination of whether his detention is justified.

A. Substantive Due Process

71. Civil immigration detention is constitutional only when it bears a reasonable relationship to a legitimate governmental purpose. *Zadvydas*, 533 U.S. at 690–91; *Jackson v. Indiana*, 406 U.S. 715, 738 (1972); *Brown v. Taylor*, 911 F.3d 235, 241 (5th Cir. 2018). In the immigration context, the Supreme Court has recognized only two legitimate purposes for civil detention: preventing flight and protecting the community from danger. *Zadvydas*, 533 U.S. at 690; *Demore v. Kim*, 538 U.S. 510, 528 (2003).

72. Petitioner's continued detention bears no reasonable relationship to either purpose. Petitioner is categorically denied any bond hearing solely based on *Matter of Yajure Hurtado*, not because of any individualized finding that he poses a flight risk or danger to the community. Detention imposed by categorical rule rather than individualized justification is arbitrary and violates substantive due process.

73. Respondents have made no showing—nor could they—that Petitioner cannot be safely released subject to reasonable conditions. Where detention is not justified by flight risk or dangerousness, continued confinement is unconstitutional. *Zadvydas*, 533 U.S. at 690.

B. Procedural Due Process

74. Procedural due process requires, at minimum, "the opportunity to be heard at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). Whether the procedures provided satisfy due process is determined by balancing: (1) the private

interest affected; (2) the risk of erroneous deprivation under existing procedures and the value of additional safeguards; and (3) the government's interest. *Id.* at 335.

75. The private interest at issue, the right to be free from physical detention, strongly favors Petitioner. Zadvydas, 533 U.S. at 690. ("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 [of the Fifth Amendment] protects.")

76. The risk of erroneous deprivation is extreme where, as here, Petitioner is denied any opportunity to seek a bond hearing or to present evidence regarding flight risk or dangerousness. The value of an individualized bond hearing before an immigration judge is substantial, as it is the only mechanism by which erroneous detention may be prevented.

77. The government's interest does not justify the complete denial of a bond hearing. Providing an individualized custody determination imposes minimal administrative burden and directly serves the government's legitimate interests in ensuring appearance and public safety. By contrast, categorical detention without a hearing wastes governmental resources and forces unnecessary judicial intervention through habeas proceedings.

C. Application of *Matter of Yajure Hurtado*

78. By categorically denying Petitioner the opportunity to request a bond hearing pursuant to *Matter of Yajure Hurtado*, Respondents have eliminated the individualized process required by the Due Process Clause. Detention imposed without any opportunity to be heard, and without any individualized justification, is unconstitutional as applied to Petitioner.

79. Petitioner's continued detention therefore violates both substantive and procedural due process under the Fifth Amendment.

80. Petitioner is entitled to immediate relief in the form of an order requiring Respondents to provide a prompt bond hearing before a neutral immigration judge, or, in the alternative, his release from custody.

81. To satisfy due process, any bond hearing ordered by this Court must place the burden on the government to justify continued detention. *Loa Caballero v. Baltazar,* No. 1:25-cv-03120-NYW, 2025 WL 2977650, at *5-6 (D. Colo. Oct. 22, 2025); *L.G. v. Choate,* 744 F. Supp. 3d 1172, 1185 (D. Colo. 2024); *Diaz-Ceja v. McAleenan,* No. 19-cv-00824-NYW, 2019 WL 2774211, at 12 (D. Colo. July 2, 2019). Where the government seeks to deprive an individual of physical liberty through civil detention, due process requires the government to demonstrate that detention is necessary to serve a legitimate purpose. See *Zadvydas v. Davis*, 533 U.S. 678, 690–91 (2001); *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). Allocating the burden to the government is essential to reduce the risk of erroneous deprivation of liberty and to ensure that detention is not imposed arbitrarily.

CLAIM TWO

VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT

82. Petitioner realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein.

83. The Board of Immigration Appeals exceeded its statutory authority in *Matter of Yajure Hurtado* by reclassifying noncitizens already present in the United States as subject to mandatory detention under 8 U.S.C. § 1225(b). That interpretation contradicts the plain text and structure of the Immigration and Nationality Act and unlawfully strips immigration judges of the discretionary bond authority Congress expressly preserved in 8 U.S.C. § 1226(a).

84. Petitioner challenges the application of § 1225(b)(2) to him, not the statute's facial validity.

85. This Court is not required—and should not—defer to the BIA's interpretation in *Matter of Yajure Hurtado*. The Supreme Court has made clear that "[c]ourts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority," and "may not defer to an agency interpretation of the law simply because a statute is ambiguous." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412 (2024).

86. Petitioner was apprehended from within the United States and is therefore subject to detention, if at all, under 8 U.S.C. § 1226(a). As the Supreme Court has explained, § 1225 applies only to noncitizens "seeking admission into the United States," while § 1226 governs the detention of noncitizens "already present in the United States." *Jennings v. Rodriguez*, 583 U.S. 281, 289, 303 (2018). Under § 1226(a), Congress authorized discretionary detention and expressly permitted release on bond following an individualized custody determination, except in the limited circumstances specified in §§ 1225(b)(1), 1226(c), or 1231.

87. Mandatory detention under § 1225(b)(2) does not apply to noncitizens who previously entered the United States and have been residing in the country prior to being taken into immigration custody. Extending § 1225(b)(2) to such individuals impermissibly expands the statute beyond its text and collapses the distinction Congress drew between arriving noncitizens and those already present in the United States.

88. By holding that noncitizens like Petitioner are categorically subject to mandatory detention under § 1225(b)(2), *Matter of Yajure Hurtado* unlawfully redefines the scope of the detention statutes and eliminates discretionary bond authority that Congress expressly preserved in § 1226(a).

89. Because detention authority is purely a creature of statute, detention imposed without statutory authorization constitutes ultra vires executive action and is unlawful per se.

90. The application of § 1225(b)(2) to Petitioner therefore violates the Immigration and Nationality Act and constitutes ultra vires agency action.

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PRAYER FOR RELIEF

WHEREFORE, Petitioner, Jose Manuel Gallardo Brito, respectfully requests that this Honorable Court grant the following relief.

A. Exercise jurisdiction over this action pursuant to 28 U.S.C. § 2241;

B. Issue an Order to Show Cause pursuant to 28 U.S.C. § 2243, directing Respondents to show cause, within a time set by the Court, why this Petition should not be granted;

C. Enjoin Respondents from removing Petitioner from the United States or transferring him outside this District while this action is pending;

D. Declare that Respondents' continued detention of Petitioner without an opportunity for an individualized bond hearing violates the Due Process Clause of the Fifth Amendment and exceeds the detention authority authorized by the Immigration and Nationality Act;

E. Declare that the application of 8 U.S.C. § 1225(b)(2) to Petitioner is unlawful as applied and constitutes ultra vires agency action;

F. Issue a Writ of Habeas Corpus ordering Respondents to immediately release Petitioner from ICE custody or, in the alternative, order Respondents to provide Petitioner with a prompt individualized bond hearing before a neutral Immigration Judge within a time certain set by this Court;

G. Order that, at any bond hearing conducted pursuant to this Court's Order, the government bears the burden of proving that continued detention is justified by flight risk or danger to the community;

H. Order Respondents, upon Petitioner's release from custody, to promptly return all personal property and identity documents seized in connection with his detention to the extent such

items are in Respondents' possession, custody, or control, including but not limited to his driver's license, employment authorization document, and any other government-issued identification.

I. Award Petitioner reasonable attorneys' fees and costs to the extent permitted by law, including under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412; and

J. Grant such other and further relief as the Court deems just and proper.

Dated: January 9, 2026

Respectfully submitted,

/s/ Veronica Semino
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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I submit this verification on Petitioner's behalf pursuant to 28 U.S.C. § 2242. I declare under penalty of perjury that the factual statements made in the foregoing Verified Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge, information, and belief.

Dated: January 9, 2026

Respectfully submitted,

/s/ Veronica Semino
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