UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

JESUS ZUNIGA-RODRIGUEZ,

Petitioner,

v.

Sylvester M. ORTEGA, Field Office Director of Enforcement and Removal Operations, San Antonio Field Office, Immigration and Customs Enforcement; Kristi NOEM, Secretary, U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; Pamela BONDI, U.S. Attorney General; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; Rose THOMPSON, Warden of Karnes County Immigration Processing Center

Respondents.

Case No. 5:26-cv-00120-OLG

SECOND AMENDED PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner Jesus Zuniga-Rodriguez brings this petition for a writ of habeas corpus to seek enforcement of their rights as members of the Bond Denial Class certified in *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (C.D. Cal.). In addition, Petitioner respectfully petitions this Honorable Court to review his unlawful detention during his pending removal proceedings in violation of his constitutional and statutory rights, and issue a Writ of Habeas Corpus.

2. Petitioner is in the physical custody of Respondents at the Karnes County Immigration Processing Center, Karnes City, TX. He now faces unlawful detention because the Department of Homeland Security (DHS) and the Executive Office for Immigration Review (EOIR) have refused to abide by the declaratory judgment issued on behalf of the certified class in *Maldonado Bautista v. Santacruz*.

3. On November 20, 2025, the district court granted partial summary judgment on behalf of individual plaintiffs and on November 25, 2025, certified a nationwide class and extended declaratory judgment to the certified class. *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3289861, at *11 (C.D. Cal. Nov. 20, 2025) (order granting partial summary judgment to named Plaintiffs-Petitioners); *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) (order certifying Plaintiffs-Petitioners' proposed nationwide Bond Eligible Class, incorporating and extending declaratory judgment from Order Granting Petitioners' Motion for Partial Summary Judgment).

4. The declaratory judgment held that the Bond Denial Class members are detained under 8 U.S.C. § 1226(a), and thus may not be denied consideration for release on bond under § 1225(b)(2)(A). *Maldonado Bautista*, 2025 WL 3289861, at *11.

5. Nonetheless, the Executive Office for Immigration Review and its subagency the Immigration Court and the Department of Homeland Security (DHS) have blatantly refused to abide by the declaratory relief and have unlawfully ordered that Petitioner be denied the opportunity to be released on bond.

6. Petitioner Jesus Zuniga-Rodriguez is a member of the Bond Eligible Class, as he:

   a. does not have lawful status in the United States and is currently detained at the Karnes County Immigration Processing Center, Karnes City, TX. He was apprehended by immigration authorities on or about December 6, 2025;

   b. entered the United States without inspection almost 20 years ago and was not apprehended upon arrival, *cf. id.*; and

   c. is not detained under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231.

7. After apprehending Petitioner on or about December 6, 2025, the DHS placed him in removal proceedings pursuant to 8 U.S.C. § 1229a. DHS has charged Petitioner as being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i), as someone who entered the United States without inspection.

8. The Court should expeditiously grant this petition.

9. Respondents are bound by the judgment in *Maldonado Bautista*, as it has the full "force and effect of a final judgment." 28 U.S.C. § 2201(a). Nevertheless, Respondents continue to flagrantly defy the judgment in that case and continue to subject Petitioner to unlawful detention despite his clear entitlement to consideration for release on bond as a Bond Eligible Class member.

10. Immigration judges have informed class members in bond hearings that they have been instructed by "leadership" that the declaratory judgment in *Maldonado Bautista* is not controlling, even with respect to class members, and that instead IJs remain bound to follow the agency's prior decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

11. Because Respondents are detaining Petitioner in violation of the declaratory judgment issued in *Maldonado Bautista,* the Court should accordingly order that within one day, Respondent DHS must release Petitioner.

12. Petitioner's detention became unlawful on or about December 6, 2025, when he was detained by ICE. His continued detention is an unlawful violation of due process and the result of ICE's incorrect interpretation of immigration law.

13. ICE detained Petitioner after an encounter with police at his residence. .

14. Alternatively, the Court should order Petitioner's release unless Respondents provide a bond hearing under 8 U.S.C. § 1226(a) within seven days or order Respondents to show cause why this Petition should not be granted within three days. 28 U.S.C. § 2243.

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

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

16. Petitioner is "in custody" for the purpose of § 2241 because Petitioner was arrested and is presently detained by Respondents.

CUSTODY

17. Petitioner is currently in the custody of ICE at Karnes County Immigration Processing Center, Karnes City, TX. He is therefore in "'custody' of [the DHS] within the meaning of the habeas corpus statute." *Jones v. Cunningham*, 371 U.S. 236, 243 (1963).

JURISDICTION

18. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Karnes County Immigration Processing Center, Karnes City, TX.

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

20. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 et. seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et. seq., the All Writs Act, 28 U.S.C. § 1651, and the Immigration and Nationality Act, 8 U.S.C. § 1252(e)(2).

21. Federal district courts have jurisdiction to hear habeas claims by non-citizens challenging both the lawfulness and the constitutionality of their detention. See Zadvydas v. Davis, 533 U.S. 678, 687 (2001). For immigration habeas petitions "jurisdiction lies in only one district: the district of confinement." *Lopez-Arevelo v Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *5 (W.D. Tex. Sept 22. 2025) (citing *Trump v. J.G.G.*, 604 U.S. 670, 672, 145 S. Ct. 1003, 221 L. Ed. 2d 529 (2025).

VENUE

22. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue lies in the United States District Court for the Western District of Texas, San Antonio Division, the judicial district in which Petitioner currently is detained.

23. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the Western District of Texas.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

24. Administrative exhaustion is unnecessary as it would be futile. The Court of Appeals for the Fifth Circuit has explained that "exceptions to the exhaustion requirement are appropriate where the available administrative remedies are unavailable or wholly inappropriate to the relief sought, or where an attempt to exhaust such remedies would itself be a patently futile course of action." Fuller v. Rich, 11 F.3d 61, 62 (5th Cir. 1994) (quoting Hessbrook v. Lennon, 777 F.2d 999, 1003 (5th Cir. 1985)). 18. It would be futile for Petitioner to seek a custody redetermination hearing before an immigration judge because of the Board of Immigration Appeals ("BIA") recent decision holding that anyone who has entered the U.S. without inspection is now considered an "applicant for admission" who is "seeking admission" and therefore subject to mandatory detention under § 1225(b)(2)(A). See Matter of Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025); see also Zaragoza Mosqueda v. Noem, 2025 WL 2591530, at *7 (C.D. Cal. Sept. 8, 2025) (noting that BIA's decision in Yajure Hurtado renders exhaustion futile).

25. Further, as the court recognized in Buenrostro-Mendez v. Bondi, 2025 WL 2886346 at * 3 (S.D. Tex 2025) "exhaustion does not bar this court's review because it is not a statutory requirement in these circumstances. Lopez Benitez v. Francis, 25 Civ. 5937, 2025 WL 2371588, at *13 (S.D.N.Y. Aug. 13, 2025). When a "'legal question is fit for resolution and delay means hardship,' a court may choose to decide the issues itself." Pizarro Reyes, 2025 WL

2609425, at *3 (quoting Shalala v. Ill. Council on Long Term Care, Inc., 529 U.S. 1, 13 (2000)). The issue here largely "boils down to a matter of statutory interpretation," which "belong[s] historically within the province of the courts." Id. Other courts faced with similar issues have found that preventing six months or more of unlawful detention (bond determinations typically take six months or more) outweighs the BIA's interest in detaining an individual while his or her bond determination is resolved on appeal. Id.; See also Lopez-Arevelo v. Ripa, No. EP-25-cv-337, 2025 WL 2691828, at *6 (W.D. Tex. Sep. 22, 2025) (waiving exhaustion in a similar case because "[t]o wait, indefinitely, for a ruling on that appeal would be inappropriate because it would exacerbate [the petitioner's] alleged constitutional injury—detention without a bond hearing")".

26. Additionally, the agency does not have jurisdiction to review Petitioner's claim of unlawful custody in violation of his due process rights, and it would therefore be futile for him to pursue administrative remedies. See Reno v Amer.-Arab Anti-Discrim. Comm., 525 U.S. 471, 119 S.Ct. 936, 142 L.Ed.2d 940 (1999) (finding exhaustion to be a "futile exercise because the agency does not have jurisdiction to review" constitutional claims); See also Petgrave v. Aleman, 529 F. Supp. 3d 665, 672 (S.D. Tex. 2021) (finding exhaustion futile because the agency cannot answer the constitutional question whether due process vests Petitioner with the right to immediate release or a bond hearing in federal court).

PARTIES

27. Petitioner Jesus Zuniga-Rodriguez is a citizen of Mexico who has been in immigration detention since approximately December 6, 2025, for over two months. After Petitioner was arrested in Yiero, Texas, ICE did not set bond, and Petitioner requested review of his custody by an IJ. Petitioner filed a bond application with EOIR and the judge denied bond

based on lack of jurisdiction. The merits of the bond were not reviewed. EOIR has advised Immigration Judges to deny bonds for those who entered EWI, arguing that the Immigration Judge lacks jurisdiction. Immigration Judges have been advised to ignore the findings in *Maldonado Bautista.*

28. Respondent Sylvester M. Ortega is the Director of the San Antonio Field Office of ICE's Enforcement and Removal Operations division. As such, Mr. Ortega is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity.

29. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

30. Respondent Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.

31. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. She is sued in her official capacity.

32. Respondent Executive Office for Immigration Review (EOIR) is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings.

33. Respondent Rose Thompson is employed as the Warden of the Karnes County Immigration Processing Center, Karnes City, TX, where Petitioner is detained. She has immediate physical custody of Petitioner. She is sued in his official capacity.

FACTUAL AND PROCEDURAL BACKGROUND

34. Petitioner Jesus Zuniga-Rodriguez is a native and citizen of Mexico He entered in 2006, without inspection and has not left since.

35. He was not apprehended at or near the border. He was apprehended by ICE almost 20 years later. He was apprehended by ICE without a warrant.

36. Petitioner is currently detained at the Karnes County Immigration Processing Center, Karnes City, TX. Petitioner is currently in immigration removal proceedings He is scheduled for a hearing before the detained immigration court in Pearsall, Texas on February 25, 2026.

37. Petitioner plans to file an application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents. He is eligible for this relief due to his 10 years of continuous presence and qualifying relatives: US Citizen Children.

38. ICE detained Petitioner on or about December 6, 2025, when police stopped him due during a routine traffic stop. During the stop, police notified ICE, who subsequently detained him.

39. On September 5, 2025, the BIA issued the decision, *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). This decision, for the first time in immigration history, proclaimed that any person who crossed the border unlawfully and is later taken into immigration detention is no longer eligible for release on bond.

40. Before September 5, 2025, just 3 months prior, the position of the BIA was that the Immigration Judge had power to grant release on bond under INA section 236(a) if the person did not have a disqualifying criminal record and the judge was satisfied, after a hearing, that the person was not a danger to the community or a flight risk. *Matter of Akhmedov*, 29 I&N Dec. 166 (BIA 2025).

41. Moreover, ICE had a longstanding practice of treating noncitizens taken into custody while living in the United States as detained pursuant to 8 U.S.C. section 1226(a). See *Rocha Rosado v. Figueroa,* 2025 WL 2337099, (D. Arizona August 11, 2025). However, this position changed on July 8, 2025, when internal "interim guidance" was released regarding a change in their longstanding interpretation of which noncitizens are eligible for release on bond. Specifically, ICE is arguing that only those already admitted to the U.S. are eligible to be released from custody during their removal proceedings, and that all others are subject to mandatory detention under 8 U.S.C. § 1225, instead of 8 U.S.C. § 1226, and will remain detained with only extremely limited parole options at ICE's discretion.

42. Petitioner's continued detention separates him from his family, prohibits him from being able to financially provide for his family, and inhibits his removal defense in many ways, including by making it difficult to communicate with witnesses, gathering evidence, and afford legal representation, among other related harm.

43. Despite having previously had the opportunity to seek a request for bond redetermination and release from custody previously, Petitioner now must remain detained, away from his family, counsel, and support system and continues to be subjected to the aforementioned harms.

44. Because Respondent's removal proceedings remain pending and he does not have a hearing scheduled until the end of February there is little likelihood that Petitioner's removal will occur in the reasonably foreseeable future.

LEGAL BACKGROUND AND ARGUMENT

Due Process Clause

45. "It is well established that the Fifth Amendment entitles aliens 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).

46. In the immigration context, the Supreme Court has addressed two purposes for civil detention: preventing flight and danger to the community. *Zadvydas*, 533 U.S. at 690.

47. "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) (quoting Armstrong v. Manzo, 380 U.S. 545, 552 (1965)). In this case, to determine the due process to be afforded to Petitioner, the 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. Detention Provisions under the Immigration and Nationality Act.

48. The INA is codified at Title 8 of the United States Code, Section 1221 et seq., and controls the United States Government's authority to detain noncitizens during their removal proceedings.

49. The INA prescribes three basic forms of detention for noncitizens in removal proceedings.

50. First, individuals detained pursuant to 8 U.S.C. § 1226(a) are generally entitled to a bond hearing, unless they have been arrested, charged with, or convicted of certain crimes and are subject to mandatory detention. See 8 U.S.C. §§ 1226(a), 1226(c) (listing grounds for mandatory detention); See also 8 C.F.R. §§ 1003.19(a) (immigration judges may review custody determinations made by DHS), 1236.1(d) (same).

51. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) as well as other recent arrivals deemed to be "seeking admission" under § 1225(b)(2).

52. Third, the INA authorizes detention of noncitizens who have received a final order of removal, including those in withholding-only proceedings. 8 U.S.C. § 1231(a)–(b).

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

54. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") of 1996, Pub. L. No. 104-208. Div. C, §§ 302-03, 110 Stat. 3009-546, 300-582 to 3009-583, 3009-585. Section 1226 was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).

55. Following the enactment of the IIRIRA, the EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not

considered detained under § 1225 and that they were instead detained under § 1226(a). See Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) ("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).

56. The legislative history behind § 1226 also demonstrates that it governs noncitizens, like Petitioner, who were deemed inadmissible upon inspection at the border, released into the United States at the border after being placed into removal proceedings, and were present in the United States for a number of years prior to being taken into detention. Before passage of the Immigration Reform and Immigrant Responsibility Act ("IRIRA"), the predecessor statute to § 1226(a) governed deportation proceedings for all noncitizens arrested within the United States, and like § 1226(a), included a provision allowing for discretionary release on bond. See 8 U.S.C. § 1252(a)(1) (1994).1 After passing the IIRIRA, Congress declared the new § 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 like Petitioner were entitled to discretionary detention under § 1226(a)'s predecessor statute, and Congress declared the statute's scope unchanged by IIRIRA, the Court should interpret § 1226 to allow for a discretionary release on bond for noncitizens in a situation similar to Petitioner.

57. On July 8, 2025, ICE, "in coordination with" DOJ, announced a new policy that rejected well-established understanding of the statutory framework and reversed decades of practice.

58. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission," claims that all persons who entered the United States without inspection shall now be subject to mandatory detention provision under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended, and affects those who have resided in the United States for months, years, and even decades.

59. On September 5, 2025, the BIA issued a precedential decision adopting this interpretation, departing from the INA's text, federal precedent, and existing regulations. See *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

60. This decision ignores decades of immigration law and precedent by the Supreme Court, as well as the policies and procedures that had been in place before EOIR for more than 30 years.

61. In *Jennings v. Rodriguez*, the Supreme Court analyzed the statutory sections in question, 8 U.S.C. section 1225 and 8 U.S.C. 1226. 583 U.S. at 287. The Court held that section 1225(b) "applies primarily to aliens seeking entry into the United States." Id. at 297 Then, the Court noted that section 1226 "applies to aliens already present in the United States." Id. at 303.

62. The Court specifically found that "Section 1226(a) creates a default rule for those aliens by permitting- but not requiring- the Attorney General to issue warrants for their arrest and detention pending removal proceedings. Section 1226(a) also permits the Attorney General to release those aliens on bond, 'except as provided in subsection (c) of this section.'" (subsection pertains to aliens who fall into categories involving criminal offenses or terrorist activities). Id.

"Federal regulations provide that aliens detained under §1226(a) receive bond hearings at the outset of detention." Id. at 306; 8 CFR 236.1(d)(1), 1236.1(d)(1).

63. The Supreme Court's analysis in Jennings demonstrates the difference between detention of arriving aliens who are seeking entry into the United States under section 1225 and the detention of those who are already present in the United States under section 1226.

64. The BIA's erroneous interpretation of the INA defies the plain text of 8 U.S.C. §§ 1225 and 1226. A key phrase in § 1225 states that "[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 v. Hyde*, 792 F. Supp. 3d 211, 214 (D. Mass. 2025).

65. The "seeking admission" language, "necessarily implies some sort of present-tense action." Id. At 218; see also Matter of M- D-C-V-, 28 I&N Dec. 18 (BIA 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 a verb tense is significant in construing statutes.").

66. "[E]very clause and word of a statute should have meaning." *United States ex rel. Polansky, M.D. v. Exec. Health Res., Inc.*, 599 U.S. 419, 432 (2023) (internal quotation marks and citation omitted). And "the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." *Gundy v. United States,* 588 U.S. 128, 141 (2019) (quotation omitted).

67. The *Matter of Yajure Hurtado* decision requires the Court to ignore critical provisions of the INA and it also renders portions of the newly enacted provisions of the INA superfluous. "When Congress amends legislation, courts must presume it intends the change to have real and substantial effect." *Van Buren v. United States*, 593 U.S. 374, 393 (2021) (quoting Ross v. Blake, 578 U.S. 632, 641-642, (216)).

68. 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).

69. This Court is not required, and should not, give deference to *Matter of Yarjure Hurtado*. In *Loper Bright*, the Supreme Court was clear that "[c]ourts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority," and indeed "may not defer to an agency interpretation of the law simply because a statute is ambiguous." *Loper Bright v. Raimondo,* 603 U.S. 369, 412 (2024). Rather, this Court should independently interpret the statute and give the BIA's expansive interpretation of § 1225(b)(2) no weight, as it conflicts with the statute, regulations, and precedent. This Court should find, in accordance with numerous district courts within the Fifth Circuit and nationwide, that applying section 1225(b)(2)(A) to all noncitizens present in the United States without admission:

disregards the plain meaning of section 1225(b)(2)(A); disregards the relationship between sections 1225 and 1226; disregards the effect of a recent amendment to section 1226(c); and conflicts with decades of prior statutory interpretation and practice. See Kostak v. Trump, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Lopez Santos v. Noem*, 2025 WL 2642278 (W.D. La. Sept. 11, 2025); *Ventura Martinez v. Trump*, (W.D. La. Oct. 22, 2025); *Lopez-Arevelo v. Ripa,* 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Gonzalez Martinez v. Noem,* 2025 WL 2965859 (W.D. Tex. Oct. 21, 2025); *Erazo Rojas v. Noem et al.*, No. 3:25-cv-00443 (W.D Tex. Oct. 30, 2025); *Buenrostro Mendez v. Bondi*, 2025 WL 2886346 (S.D. Tex. Oct. 7, 2025); *Padron Covarrubias v. Vergara*, 5:25-CV-112 (S.D. Tex. Oct. 8, 2025); See also Inspection and Expedited Removal of Aliens, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) (explaining that "[d]espite 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").

70. By specifically referencing inadmissibility for entry without inspection under 8 U.S.C. § 1182(6)(A), Congress made clear that such individuals are otherwise covered by § 1226(a). Thus, § 1226 plainly applies to noncitizens charged as inadmissible, including those present without admission or parole.

71. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like Petitioner, who were encountered years later in the interior of the United States, that Petitioner falls under the discretionary arrest provision of § 1226(a) as an uninspected entrant. Critically, DHS itself alleged in the Notice to Appear that Petitioner "entered the United States without inspection and without parole or lawful admission," a factual assertion that squarely contradicts the Government's current position—adopted wholesale by the BIA—that

Petitioner is ineligible to apply for bond before EOIR. This reversal undermines the integrity of the adjudicative process and triggers the principles of issue preclusion recognized in *B&B Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. 138 (2015), which require courts to respect agency determinations when the ordinary elements of preclusion are met.

72. § 235 has historically applied to "applicants for admission" who are encountered at the port of entry or shortly after. § 236 specifically governs individuals who are already present in the United States and are being placed in removal proceedings. Petitioner was apprehended over 17 years later in the interior of the United States and therefore falls under the discretionary detention framework of § 236 rather than the mandatory detention provisions of § 235(b).

73. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to Petitioner.

FIRST CAUSE OF ACTION
Violation of Fifth Amendment Right to Due Process

74. Petitioner restates and realleges all paragraphs 1 to 73 as if fully set forth herein.

75. The Fifth Amendment's Due Process Clause prohibits the federal government from depriving any person of "life, liberty, or property, without due process of law." U.S. Const. Amend. V.

76. The Supreme Court has repeatedly emphasized that the Constitution generally requires a hearing before the government deprives a person of liberty or property. *Zinermon v. Burch*, 494 U.S. 113, 127 (1990).

77. Under the *Mathews v. Eldridge*,2 framework, the balance of interests strongly favors Petitioner's release.

78. Petitioner's private interest in freedom from detention is profound. The interest in being free from physical detention is "the most elemental of liberty interests." *Hamdi v. Rumsfeld,* 542 U.S. 507, 529 (2004); see also *Zadvydas v. Davis,* 533 U.S. 678, 690 (2001) ("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.").

79. The risk of erroneous deprivation is exceptionally high. Petitioner has never been convicted of any crime, was found to not be a danger to the community previously, based on the judge's dismissal of removal proceedings, and has strong ties to the United States. Therefore, Petitioner does not pose a danger to the community and is not a flight risk.

80. The government's interest in detaining Petitioner without due process is minimal. Immigration detention is civil, not punitive, and may only be used to prevent danger to the community or ensure appearance at immigration proceedings. See *Zadvydas*, 533 U.S. at 690.

81. Furthermore, the "fiscal and administrative burdens" of providing Petitioner with a bond hearing are minimal, particularly when weighed against the significant liberty interests at stake. See Mathews, 424 U.S. at 334–35.

82. For these reasons, Petitioner's detention violates the Due Process Clause of the Fifth Amendment.

SECOND CAUSE OF ACTION
Violation of the Immigration and Nationality Act

83. Petitioner restates and realleges paragraphs 1 to 73 as if fully set forth herein.

84. Petitioner is being detained pursuant to authority contained in section 236 of the INA; section 236 is codified at 8 U.S.C. § 1226.

85. Despite this, the BIA issued *Matter of Yajure Hurtado* on September 5, 2025, preventing Petitioner's ability to request a bond redetermination from the Judge.

81. 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.

82. The BIA has wrongfully issued its decision in *Matter of Yajure Hurtado* finding all noncitizens, such as the Petitioner, are subject to mandatory detention under § 1225(b)(2).

83. The unlawful application of § 1225(b)(2) to Petitioner violates the INA and forecloses the EOIR's ability to consider Petitioner's release on bond.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

(1) Assume jurisdiction over this matter;

(2) Order that Petitioner not be transferred outside of this District;

(3) Issue an Order to Show Cause ordering Respondents to show cause why his Petition should not be granted within three days;

(4) Declare that Petitioner's detention is unlawful;

(5) Issue a Writ of Habeas Corpus ordering Respondents to release him from custody or provide him with a bond hearing pursuant to 8 U.S.C. § 1226(a) or the Due Process Clause within seven days; and

(6) Grant him any further relief this Court deems just and proper.

DATED this 17th day of February, 2026.

By: /s/Kymberly Renaud
Kymberly A. Renaud
Texas State Bar No. 24107699

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ATTORNEY FOR PETITIONER

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Jesus Zuniga-Rodriguez, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Second Amended Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge and belief.

DATED this 17th day of February, 2026.

By: /s/Kymberly Renaud
Kymberly A. Renaud