

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**

Pedro Sabas GOMEZ GONZALEZ

Petitioner,

v.

Garrett J. RIPA, Field Office Director
of Enforcement and Removal
Operations, Miami Field Office,
Immigration and Customs
Enforcement; Kristi NOEM,
Secretary, U.S. Department of
Homeland Security; Pamela J.
BONDI, U.S. Attorney General,
Department of Justice; Todd LYONS,
Acting Director, Immigration and
Customs Enforcement; WARDEN of
Glades County Detention Center in
Moore Haven, Florida

Respondents.

Case No. 2:26-CV-00086

**PETITION FOR WRIT OF
HABEAS CORPUS AND
ORDER TO SHOW CAUSE
WITHIN THREE DAYS**

INTRODUCTION

1. Petitioner, Pedro Sabas Gomez Gonzalez, is in the physical custody of Respondents at the Glades County Detention Center in Moore Haven, Florida. **Ex. 1**, U.S. Immigration and Customs Enforcement (ICE) Detainee Locator Information. He now faces unlawful detention because the Department of Homeland Security (DHS) and the Executive Office for Immigration Review (EOIR) of the Department of Justice (DOJ) have erroneously concluded that Petitioner is subject to mandatory detention under U.S.C. § 1225(b)(2).

2. Petitioner is a Nicaraguan national who entered the United States in 2005 without inspection. Throughout the past 20 years, Petitioner has lived in the United States and worked tirelessly to provide for his family. Petitioner has no criminal history or prior encounters with immigration officials. In July 2023, Petitioner applied for asylum and for withholding of removal with U.S. Citizenship and Immigration Services (USCIS) and the application remains pending. **Ex. 2**, USCIS Asylum Receipt Notice. Then, in 2024, Petitioner applied for and received work authorization through May 5, 2029. **Ex. 3**, Employment Authorization Document and Florida Driver's License.

3. On December 14, 2025, Petitioner was arrested by Florida Highway Patrol agents during a traffic stop. Petitioner was taken to the U.S. Customs and Border Protection (CBP) Dania Beach Border Patrol Station

where he was processed and detained for about 4 days. DHS then transferred Petitioner to Alligator Alcatraz, and then again, on January 12, 2026, to Glades County Detention Center.

4. On January 15, 2026, Respondents initiated removal proceedings against Petitioner and filed a Notice to Appear with the Miami Krome Immigration Court. Ex. 4, Notice to Appear. Petitioner is charged with, *inter alia*, having entered the United States without inspection and being an immigrant not in possession of a valid entry document. 8 U.S.C. § 1182(a)(6)(A)(i); 8 U.S.C. § 1182(a)(7). He is represented by undersigned counsel in his removal proceedings.

5. On July 8, 2025, DHS issued a new policy instructing all ICE employees to consider anyone who entered the United States without inspection to be an “applicant for admission” under Section 1225(b)(2)(A) and therefore subject to mandatory detention. Then, on September 5, 2025, the Board of Immigration Appeals (BIA) adopted this position in a published decision, *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), holding that all noncitizens who entered the United States without inspection – no matter how long they have been present in the country –are ineligible for immigration judge bond hearings. Consistent with this policy, DHS now indefinitely denies Petitioner release from immigration custody.

6. Petitioner's detention on this basis violates the plain language of the INA. Section 1225(b)(2) does not apply to individuals like Petitioner, who entered the United States 20 years ago and was apprehended hundreds of miles from any border or port of entry. Instead, such individuals are subject to discretionary detention under Section 1226(a), which allows for release on conditional parole or bond. That statute expressly applies to people who, like Petitioner, entered the United States without inspection.

7. Respondents' new legal interpretation is plainly contrary to the statutory text, statutory framework, Congressional intent, decades of agency practice, and decisions of federal courts across the nation, which apply Section 1226(a) to people like Petitioner. Further, Respondents' detention of Petitioner without a bond redetermination hearing to determine whether he is a flight risk or danger to others violates his right to due process.

8. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be released, or in the alternative, that he be provided a prompt bond hearing under Section 1226(a).

JURISDICTION

9. Petitioner is in the physical custody of Respondents. Petitioner is detained at Glades County Detention Center in Moore Haven, Florida.

10. 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).

11. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

VENUE

12. 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 Middle District of Florida, the judicial district in which Petitioner currently is detained. 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 Middle District of Florida.

REQUIREMENTS OF 28 U.S.C. § 2243

13. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Respondents must file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*

14. Habeas corpus is “perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). “The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application.” *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

PARTIES

15. Petitioner Pedro Sabas Gomez Gonzalez is a citizen of Nicaragua who has resided in the United States since approximately December 2005. He has been in immigration detention since December 14, 2025.

16. Respondent Garrett J. Ripa is the ICE Field Office Director for Enforcement and Removal Operations (ERO) for the State of Florida, Puerto Rico, and the U.S. Virgin Islands, which includes Moore Haven, Florida. As such, Mr. Ripa is Petitioner’s immediate custodian and is responsible for Petitioner’s detention and removal. He is named in his official capacity.

17. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the 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.

18. Respondent Pamela Jo Bondi is the Attorney General of the United States. She is responsible for the DOJ, of which the EOIR and the immigration court system it operates is a component agency. She is sued in her official capacity.

19. Respondent Todd Lyons is the Acting Director of ICE. As the head of ICE, he is responsible for decisions related to the detention and removal of certain noncitizens, including Petitioner. As such, he is also a legal custodian of Petitioner. He is sued in his official capacity.

20. Respondent Warden of Glades County Detention Center is the Warden where Petitioner is currently detained. He is an immediate custodian of Petitioner. He is sued in his official capacity.

FACTUAL BACKGROUND

21. Petitioner is a 51-year-old national of Nicaragua. Ex. 5, Nicaraguan Passport. He entered the United States without inspection in December 2005 and has lived here ever since. Petitioner lived in Miami, Florida prior to his detention.

22. Since arriving in the United States, Petitioner has been consistently employed to support himself and his family. He worked for a subcontractor car wash at a Toyota Dealership for the last 10 years. Petitioner has a strong support network in Miami, Florida and is a loved and respected

member of his community. Petitioner has no criminal history and has spent the last twenty years living a law-abiding and productive life.

23. On July 27, 2023, Petitioner applied for asylum and for withholding of removal with U.S. Citizenship and Immigration Services (USCIS) and the application remains pending. Then, in 2024, Petitioner applied for and received work authorization through May 5, 2029.

24. On December 14, 2025, Petitioner was arrested by Florida Highway Patrol agents during a traffic stop. Petitioner presented his valid, unexpired Florida Driver's License, but agents informed him that the license was not acceptable because it was issued to him during the prior presidential administration. Petitioner was then taken to the U.S. Customs and Border Protection (CBP) Dania Beach Border Patrol Station where he was processed and detained in a holding cell for about 4 days.

25. Respondent DHS then transferred Petitioner to "Alligator Alcatraz", now named Florida Soft Side South, in Ochopee, Florida. Later, on January 12, 2026, he was transferred to Glades County Detention Center in Moore Haven, Florida, where is currently detained.

26. On January 15, 2026, a month after Petitioner's arrest and detention, Respondents initiated removal proceedings against Petitioner and filed a Notice to Appear with the Miami Krome Immigration Court. Petitioner is charged with having entered the United States without inspection and being

an immigrant not in possession of a valid entry document. 8 U.S.C. § 1182(a)(6)(A)(i); 8 U.S.C. § 1182(a)(7).

27. Petitioner is represented by undersigned counsel in his removal proceedings. His first master calendar hearing is scheduled for January 29, 2026, at 8:00 AM. **Ex. 6**, EOIR Automated Case Information. Petitioner will re-file his asylum application with the Miami Krome Immigration Court before his first hearing.

28. Pursuant to Respondents' new policy, discussed *infra*, Petitioner remains in mandatory detention. Absent relief from this Court, he faces the prospect of months, or even years, in immigration custody, separated from his family and community without ever receiving an individualized hearing justifying his detention in violation of the INA and Due Process.

EXHAUSTION OF REMEDIES

29. No statutory requirement of administrative exhaustion applies to Petitioner's case. Moreover, the judicially created "general rule that parties exhaust prescribed administrative remedies before seeking relief from the federal courts" does not apply to Petitioner's present challenge, as there are no prescribed administrative remedies to which he could resort. *McCarthy v. Madigan*, 503 U.S. 140, 144–45 (1992), *superseded by statute on other grounds as recognized in Woodford v. Ngo*, 548 U.S. 81 (2006).

30. In particular, DHS has taken the position that a noncitizen like Petitioner, who entered without inspection, is subject to mandatory detention under 8 U.S.C. § 1225, and EOIR has affirmed that view. In a published decision, the BIA recently held that “Immigration Judges lack authority to hear bond requests or to grant bond to [noncitizens] who are present in the United States without admission.” *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Under the BIA’s interpretation, Petitioner is ineligible for bond as a noncitizen who entered the United States without inspection.

31. Accordingly, there are no administrative remedies that he could exhaust before seeking habeas relief. *See Singh v. Lewis*, No. 4:25-CV-96-RGJ, 2025 WL 2699219, at *3 (W.D. Ky. Sept. 22, 2025) (“[t]he United States has made clear their position on Section 1225, and it is being applied at all levels within the DHS. Therefore, it is unlikely that any administrative review would lead to the United States changing its position and precluding judicial review”); *Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, 2025 WL 2496379, at *4 (E.D. Mich. Aug. 29, 2025) (“Because exhaustion would be futile and unable to provide Lopez-Campos with the relief he requests in a timely manner, the Court waives administrative exhaustion and will address the merits of the habeas petition.”).

32. On November 25, 2025, the U.S. District Court for the Central District of California issued a nationwide class certification and bond eligibility

order in *Maldonado Bautista v. Noem*, holding that noncitizens who entered without inspection are detained under section 1226(a) and are legally entitled to a custody redetermination. *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3288403 (C.D. Cal. Nov. 25, 2025). However, immigration judges have continued to follow *Yajure Hurtado*. Even more, on January 13, 2026, EOIR issued nationwide guidance instructing all immigration judges that “*Maldonado Bautista* is not a nationwide injunction and does not purpose to vacate, stay or enjoin *Yajure Hurtado*.” See AILA Doc. 26011404, <https://www.aila.org/library/practice-alert-eoir-issues-nationwide-guidance-on-maldonado-bautista>.

33. Further, neither an immigration judge nor the BIA can rule on a petitioner’s constitutional claims. See *Matter of R-A-V-P*, 27 I. & N. Dec. 803, 804 n.2 (BIA 2020) (holding that IJs and the BIA lack any authority to consider the constitutionality of the statutes or regulations governing immigration detention that they administer and are bound to follow); *Matter of C--*, 20 I. & N. Dec. 529, 532 (BIA 1992) (“[I]t is settled that the immigration judge and this Board lack jurisdiction to rule upon the constitutionality of the Act and the regulations.”).

LEGAL FRAMEWORK

I. Detention Authority and Respondent’s Efforts to Expand Mandatory Detention

34. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.

35. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens “already in the country.” *See Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018). Section 1226(a) “sets out the default rule: The Attorney General may issue a warrant for the arrest and detention of a[] [noncitizen] ‘pending a decision on whether the [noncitizen] is to be removed from the United States.’” *Id.* at 288 (quoting § 1226(a)). Individuals in Section 1226(a) detention are generally entitled to a bond hearing at the outset of their detention. *See* § 1226(a)(2); 8 C.F.R. §§ 1003.19(a), 1236.1(c)(8), (d)(1).

36. Section 1226(c) “carves out a statutory category” of noncitizens from Section 1226(a) for whom detention is mandatory, comprised of individuals who have committed certain “enumerated ... criminal offenses [or] terrorist activities.” *Jennings*, 583 U.S. at 289 (citing § 1226(c)(1)). Among the individuals carved out and subject to mandatory detention are certain categories of “inadmissible” noncitizens. § 1226(c)(1)(A), (D), (E). Reference to such inadmissible noncitizens makes clear that, by default, people who are applicants for admission but encountered in the interior are afforded a bond hearing under subsection 1226(a).

37. Second, the INA provides for mandatory detention of certain categories of noncitizens “seeking entry into the United States” under 8 U.S.C.

§ 1225(b). *Jennings*, 583 U.S. at 297; see § 1225(b) (“Inspection of applicants for admission”). In *Jennings*, the Supreme Court explained that this mandatory scheme applies “at the Nation’s borders and ports of entry, where the Government must determine whether a[] [noncitizen] *seeking to enter* the country is inadmissible.” *Jennings*, 583 U.S. at 287 (emphasis added). Noncitizens subject to mandatory detention under Section 1225 may not be released except “for urgent humanitarian reasons or significant public benefit” under the parole authority provided by 8 U.S.C. § 1182(d)(5)(A). See *id.* at 300.

38. Section 1225 is split into two categories. Section 1225(b)(1) provides for mandatory detention of noncitizens charged with enumerated grounds of inadmissibility and placed in expedited removal proceedings. 8 U.S.C. § 1225(b)(1)(A)(i). Meanwhile, Section 1225(b)(2) applies only to recently arrived noncitizens seeking entry at a border or port of entry. Last, the INA also provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings, see 8 U.S.C. § 1231(a)–(b).

39. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2). Respondents have recently taken various steps seeking to expand their use of mandatory detention under Section 1225(b)(2).

40. 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. *See* ICE, Interim Guidance Regarding Detention Authority for Applicants for Admission (July 8, 2025), <https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>. The new policy claims that all persons who entered the United States without inspection shall now be deemed “applicants for admission” under 8 U.S.C. § 1225 and therefore are subject to mandatory detention under § 1225(b)(2)(A).

41. On September 5, 2025, the BIA issued a published decision adopting this same position. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). That decision holds that all noncitizens who entered the United States without admission or parole are considered applicants for admission and are ineligible for immigration judge bond hearings. Further, as explained above, on January 13, 2026, EOIR issued nationwide guidance instructing immigration judges to continue following *Yajure Hurtado* and deny bonds to noncitizens who entered without inspection.

II. Respondent’s Policy on Section 1225(b)(2) Is Incorrect

42. Respondent’s policy, that all undocumented noncitizens who entered without inspection are considered applicants for admission and subject to mandatory detention under Section 1225(b)(2)(A), is erroneous.

a. Statutory Text and Framework

43. The text of Section 1225, along with its placement in the overall detention scheme of the INA, make clear that the terms “applicant for admission” and “seeking admission” in Section 1225(b)(2) do not include individuals who have entered without inspection and are apprehended when already inside the United States.

44. Section 1225 is titled: “Inspection by immigration officers; expedited removal of inadmissible *arriving* aliens; referral for hearing.” (emphasis added). As courts have recognized, “[t]he added word of ‘arriving’ indicates that the statute governs ‘arriving’ noncitizens, not those present already.” *Beltran Barrera v. Tindall*, No. 3:25-CV-541-RGJ, 2025 WL 2690565, at *4 (W.D. Ky. Sept. 19, 2025) (citing *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425, at *5 (E.D. Mich. Sept. 9, 2025)). This limitation is particularly clear when compared to Section 1226’s general title: “Apprehension and detention of aliens.”

45. Also, the term “seeking” in “seeking admission” “implies action – something that is currently occurring, and in this instance, would most logically occur at the border upon inspection.” *Lopez-Campos*, 2025 WL 2496379, at *6 (E.D. Mich. Aug. 29, 2025); *see also Beltran Barrera*, 2025 WL 2690565, at *4. Noncitizens who are present in the country for years are not “seeking admission.” *Lopez-Campos*, at *6; *Beltran Barrera*, at *4.

46. The INA's entire framework is premised on Section 1225 governing detention of "arriving [noncitizens]" while Section 1226 "applies to [noncitizens] already present in the United States." *Jennings*, 583 U.S. at 288, 301; see also *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588, at *8 (S.D.N.Y. Aug. 13, 2025). A fundamental principle of statutory construction is that courts must interpret statutes to give meaning to all provisions and avoid reading out or rendering superfluous any single provision. *Corley v. United States*, 556 U.S. 303, 314 (2009). The government's current reading of Section 1225(b)(2) violates this principle.

47. Section 1226(c)'s carve outs for certain categories of inadmissible noncitizens further indicates that, contrary to Respondents' interpretation, there are noncitizens who have not been admitted and that are not governed by Section 1225's mandatory detention scheme.

b. Congressional Intent and Longstanding Agency Practice

48. The current detention system has been in place since the passage 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.

49. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under Section 1225 and that

they were instead detained under Section 1226(a) and eligible for bond and bond redetermination. *See* 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

50. Subsequently, most people who entered without inspection and were apprehended inside the United States were detained under Section 1226(a) and received bond hearings, unless their criminal history rendered them ineligible. That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed “arriving” were entitled to a custody hearing before an immigration judge or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994).

c. Recent Federal Court Decisions Confirming Petitioner’s Position

51. Numerous federal courts, including in this District, have reached conclusions consistent with Petitioner’s position. In the U.S. District Court for the Middle District of Florida, several judges have found that the new expansive interpretation of mandatory detention is likely unlawful and that Section 1226(a), not Section 1225(b), applies to noncitizens who entered without inspection and have lived in the United States for years. *See Hernandez-Lopez v. Hardin*, et al., No. 2:25-CV-830-KCD-NPM, 2025 WL 3022245, at *4-5 (M.D. Fla. Oct. 29, 2025); *Hinojosa Garcia v. Noem*, No. 2:25-CV-00879-SPC-NPM, 2025 WL 3041895, at *5 (M.D. Fla. Oct. 31, 2025); *Bravo-Diaz v. Mordant*, 2:25-CV-01013, 2025 WL 3906020, at *1 (M.D. Fla. Dec. 16, 2025). Many courts across the nation have reached the same conclusion,

rejecting Respondents' erroneous interpretation of the INA. *See Rodriguez v. Bostock*, No. 3:25-CV-05240-TMC, 2025 WL 2782499, at *1 & n.3 (W.D. Wash. Sept. 30, 2025); *see also Buenrostro-Mendez v. Bondi*, No. CV H-25-3726, 2025 WL 2886346, at *3 (S.D. Tex. Oct. 7, 2025).

III. Petitioner's Detention Violates the INA

52. Petitioner's detention is not authorized under Section 1225(b)(2).

53. As discussed above, mandatory detention under Section 1225(b)(2) applies only to recently arrived noncitizens seeking admission at a border or port of entry, not individuals who entered without inspection and were later detained inside the country.

54. Here, "there is nothing in the record to suggest that [Petitioner] ever attempted to gain lawful entry." *Lopez-Campos*, 2025 WL 2496379, at *6. Petitioner entered without inspection, never encountered a DHS official, and lived in the United States for 20 years prior to being detained during a traffic stop on December 14, 2025. As such, Petitioner is not subject to mandatory detention under Section 1225(b)(2).

55. Petitioner's detention is not authorized under Section 1226(a), either. Section 1226(a)'s discretionary detention framework requires a bond hearing to make an individualized custody determination based on Petitioner's risk of flight or dangerousness. Here, Respondents have not provided such a

hearing. Further, there is no information indicating that Petitioner is a flight risk or danger to the community.

56. Lacking any statutory basis for his detention, Respondent must release Petitioner or, in the alternative, promptly hold a bond hearing to determine whether he should remain in custody.

IV. Petitioner's Detention Violates the Due Process Clause

57. Noncitizens are entitled to due process of the law under the Fifth Amendment. *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). To determine whether civil detention violates a noncitizen's Fifth Amendment procedural due process rights, courts apply the three-part test in *Mathews v. Eldridge*, 424 U.S. 319 (1976).

58. Under *Mathews*, courts weigh the following three factors: 1) "the private interest that will be affected by the official action;" 2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards;" and 3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." 424 U.S. at 335.

a. Private Interest

59. As to the first *Mathews* factor, "[t]he interest in being free from physical detention" is "the most elemental of liberty interests." *Hamdi v.*

Rumsfeld, 542 U.S. 507, 529, 531 (2004). Petitioner has been detained for over a month at a CBP station and two different detention centers in conditions that are indistinguishable from criminal incarceration. This detention deprives him of privacy, freedom of movement, and the ability to work and see his loved ones.

b. Risk of Erroneous Deprivation

60. As to the second *Mathews* factor, Respondents' current procedures cause an erroneous deprivation of Petitioner's liberty interest in remaining free from detention. As discussed above, the statutory text and framework, Congressional intent, longstanding practice of the agency, and decisions of many federal courts across the nation leave no doubt that Section 1225(b)(2) applies only to recently arrived noncitizens seeking entry at a border or port of entry, not noncitizens who entered without inspection and were detained inside the country.

61. Here, Petitioner was not arriving at a border or port of entry when he was detained, nor was he ever seeking admission to the country. Instead, he entered without inspection, never had any encounter with DHS officials, and lived in the United States for 20 years before being detained. As such, Petitioner is not subject to mandatory detention under Section 1225(b)(2).

62. Therefore, the government's current procedure, subjecting Petitioner to mandatory detention under Section 1225(b)(2), creates a

substantial risk of erroneous deprivation of Petitioner's interest in being free from arbitrary confinement.

63. Additionally, there are reasonable alternatives available for Respondent to pursue. Section 1226(a) applies to noncitizens facing charges of inadmissibility, including noncitizens like Petitioner who entered without inspection and were later detained while residing inside the country. As such, proper application of the INA's detention scheme allows for the possibility of detaining Petitioner under Section 1226(a) but first requires a bond hearing to make an individualized determination of his risk of flight or dangerousness. Such a hearing has not happened. Without it, the risk of erroneous deprivation of Petitioner's freedom is high. *See Singh v. Lewis*, 2025 WL 2699219, at *9 ("the risk of erroneously depriving him of his freedom is high if the IJ fails to assess his risk of flight or dangerousness.").

c. Government Interest

64. As to the third *Mathews* factor, the government's interest in maintaining the current procedure is minimal here. The new interpretation of Section 1225(b)(2) – that people like Petitioner who have resided in the United States for years are now subject to mandatory detention – flies in the face of the statutory text, statutory framework, Congressional intent, almost three decades of prior practice, and the decisions of federal courts across the nation. Any government interest in public safety or ensuring that Petitioner attends

future immigration proceedings would be satisfied through proper application of Section 1226(a), which requires a bond redetermination hearing where an immigration judge will consider Petitioner's individualized facts to determine whether he is a danger to the community or a flight risk.

CLAIMS FOR RELIEF

COUNT I **Violation of the INA**

65. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation of fact set forth in the preceding paragraphs.

66. 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. As relevant here, it does not apply to Petitioner, who previously entered the country and had been residing in the United States prior to being detained and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

67. But Respondents' actions here violate § 1226(a) too because Respondents have refused to consider Petitioner for bond without ever demonstrating that he is a flight risk or danger to others. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates the INA.

COUNT II
Violation of Due Process

68. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

69. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment...lies at the heart of the liberty that the Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

70. Petitioner has a fundamental interest in liberty and being free from official restraint. Petitioner entered the country without inspection, had no contact with any DHS officials, and lived in the United States for 20 years before being detained. Such an individual may only be subject to discretionary detention under 8 U.S.C. § 1226, which provides for release on bond.

71. Respondents' detention of Petitioner without a bond redetermination hearing to determine whether he is a flight risk or danger to others violates his right to procedural due process.

PRAYER FOR RELIEF

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

- a. Assume jurisdiction over this matter;
- b. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;

- c. Issue a writ of habeas corpus requiring that Respondents immediately release Petitioner or, in the alternative, provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) within seven days;
- d. Enjoin Respondents from moving Petitioner outside the jurisdiction of this Court pending adjudication of this petition;
- e. Declare that Petitioner's continued detention violates the INA and its implementing regulations and the Due Process Clause of the Fifth Amendment of the U.S. Constitution;
- f. Order that Respondents return all retained identity documents to Petitioner; and
- g. Grant any other and further relief that this Court deems just and proper.

DATED this 16th of January, 2026

Respectfully submitted,

/s/ Juliana M. Lopez
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Attorney for Petitioner

VERIFICATION

Pursuant to 28 U.S.C. §§ 2242 and 1746, I declare under penalty of perjury that the facts set forth in the foregoing Petition for Habeas Corpus are true and correct.

Executed this 16th of January, 2026

/s/ Juliana M. Lopez
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