

SOUTHERN DISTRICT OF MISSISSIPPI
FILED

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI**

JAN 16 2026

BY **ARTHUR JOHNSTON**
DEPUTY

MARK TAKAZOV,

A 

Petitioner/Plaintiff,

v.

RAFAEL VERGARA, Warden,
Adams County Correctional Center,
TODD LYONS, Acting Director, Immigration
and Customs Enforcement, **KRISTI NOEM**,
Secretary of United States Department of
Homeland Security, **MELLISSA HARPER**,
Immigration and Customs Enforcement,
New Orleans Field Office Director,
PAMELA BONDI, United States Attorney General,

Respondents/Defendants

Civil Action No.

5:26-cv-13-DCB-BWR

**PETITION FOR WRIT OF
HABEAS CORPUS UNDER 28
U.S.C. § 2241 AND COMPLAINT
FOR INJUNCTIVE AND
DECLARATORY RELIEF**

The Petitioner, MARK TAKAZOV, by and through his own and proper person and through his attorney, BRANDON H. RICHES hereby petition this Honorable Court to issue a Writ of Habeas Corpus to review his unlawful detention during his pending removal proceedings, in violation of his constitutional and statutory rights.

BACKGROUND

1. Petitioner is presently being detained by U.S. Immigration and Customs Enforcement ("ICE") at Adams County Correctional Center in Natchez, Mississippi.
2. Petitioner is a native and citizen of Russia. He has been present in the United States since June 9, 2022, after he applied for admission and was paroled into the United States. *See* Exhibit A.

3. On December 22, 2025, Petitioner was re-detained, over three years later after being admitted into the United States.
4. Petitioner's detention is a substantial deprivation and burden that puts Petitioner and his family at risk.
5. Petitioner is married and has two children; together they live in New York.
6. Petitioner timely filed his asylum application.
7. Petitioner has never been arrested or convicted of any crime.
8. Petitioner worked as a truck driver with a valid Commercial Driver's License.
9. Respondents detained Petitioner in Virginia while he was working as a truck driver at a gas station.
10. Petitioner's detention became unlawful on December 22, 2025, when he was detained by Immigration and Customs Enforcement (ICE). His continued detention is an unlawful violation of due process and incorrect interpretation of immigration law.
11. Petitioner respectfully asks this Court to issue a temporary restraining order directing Respondents to conduct a bond hearing to ensure his due process rights and his ability to be reunited with his immediate family in the United States, whom require Petitioner's presence and support.
12. In the alternative, Petitioner respectfully requests the Court order Respondents to show cause why this Petition should not be granted within three days. *See* 28 U.S.C. § 2243.

JURISDICTION

13. The action arises under the Constitution of the United States, 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.

14. This Court has habeas corpus jurisdiction pursuant to 28 U.S.C. § 2241, and Article I, section 9, clause 2 of the United States Constitution (the “Suspension Clause”), as Petitioner is presently subject to immediate detention and custody under color of authority of the United States government, and said custody is in violation of the Constitution, law or treaties of the United States.
15. This action is brought to compel the Respondents, officers of the United States, to accord Petitioner the due process of law to which he is entitled under the Fifth and Fourteenth Amendments of the United States Constitution.
16. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgments Act, 28 U.S.C. § 2201 et seq., 28 U.S.C. § 1331 (federal question jurisdiction), 28 U.S.C. § 1361 (mandamus), and the All Writs Act, 28 USC § 1651.

VENUE

17. Venue is proper in the Southern District of Mississippi because Petitioner is presently detained by Respondents at Adams County Correctional Center – which is located within the Southern District of Mississippi. 28 U.S.C. § 1391(b), (e)(1).

PARTIES

18. Petitioner MARK TAKAZOV is a native and citizen of Russia. Petitioner is presently detained at the Adams County Correctional Center located in Natchez, Mississippi.
19. Respondent Pam Bondi is sued in her official capacity as the United States Attorney General. As Attorney General, Ms. Bondi is responsible for the administration and enforcement of the immigration laws of the United States.

20. Respondent Kristi Noem is sued in her official capacity as Secretary of the Department of Homeland Security (“DHS”). As Secretary of DHS, Ms. Noem is responsible for the administration and enforcement of the immigration laws of the United States.
21. Respondent Todd Lyons is sued in his official capacity as Acting Director of Immigration and Customs Enforcement (“ICE”). As the Acting Director of ICE, Mr. Lyons is responsible for the administration and enforcement of the policies and procedures for ICE’s detention of Petitioner at Adams County Correctional Center (“Adams”).
22. Respondent Mellissa Harper is sued in her official capacity as Field Office Director of ICE and Enforcement and Removal (“ERO”) for the New Orleans office. As the Field Office Director of ICE/ERO, Ms. Harper is responsible for the administration and enforcement of the policies and procedures for ICE’s detention of Petitioner at Adams County Correctional Center.
23. Respondent, Rafael Vergara, is the Warden of Adams County Correctional Center. As such, Mr. Vergara is responsible for the operation of the Correctional Center where Mr. Takazov is detained. Because ICE contracts with detention centers such as Adams to house immigration detainees such as Mr. Takazov, Respondent has immediate physical custody of the Petitioner.

FACTS

24. Petitioner MARK TAKAZOV is a native and citizen of Russia.
25. Petitioner entered the United States in May 2022 after he applied for admission at a port of entry.
26. On or about May 2022, Petitioner appeared at the Tecate Port of Entry. *See* Exh. A. The next day, DHS issued Petitioner a Form, I-862, Notice to Appear (“NTA”) charging him

with inadmissibility pursuant to § 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (INA) for being “an immigrant not in possession of [valid immigration and travel documents].” *See* Exh. A.

27. Shortly thereafter, Petitioner was paroled into the United States, given an I-94, and placed in full removal proceedings. *Id.*
28. Three years later, on December 22, 2025, Petitioner was arrested by ICE while he was working as a truck driver in Virginia.
29. Since December 22, 2025, Petitioner has been detained by ICE.
30. Petitioner is presently detained at the Adams County Correctional Center located in Natchez, Mississippi.
31. Petitioner is scheduled for a hearing before the immigration court at the end of the month.
32. As this Honorable Court may be aware of, on September 5, 2025, the Board of Immigration Appeals (“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.
33. Before September 5, 2025, just 3 months prior, the official 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).
34. 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). *Rocha*

Rosado v. Figueroa, 2025 WL 2337099, (D. Arizona August 11, 2025); *see Loper Bright Enter. v. Raimondo*, 603 U.S. 369, 386 (2024) (“[T]he longstanding practice of the government—like any other interpretive aid—can inform [a court’s] determination of what the law is.”). 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. Ex. 3, Interim Guidance (July 8, 2025). 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. See *id.*

35. 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.
36. Despite having previously had the opportunity to seek a request for bond redetermination and release from custody prior to September 5, 2025, Petitioner now must remain detained several states away from his family, counsel, and support system and continues to be subjected to the aforementioned harms.
37. Because Respondent’s removal proceedings remain pending and he has not had a final hearing, there is little likelihood that Petitioner’s removal will occur in the reasonably foreseeable future.

LEGAL FRAMEWORK

Due Process Clause

38. “It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings.” *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).
39. In the immigration context, the Supreme Court only recognizes two purposes for civil detention: preventing flight and mitigating the risks of danger to the community. *Zadvydas*, 533 U.S. at 690; *Demore*, 538 U.S. at 528. A noncitizen may only be detained based on these two justifications if they are otherwise statutorily eligible for bond. *Zadvydas*, 533 U.S. at 690.
40. “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). 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.

Humanitarian Parole and Recent Detention

41. As a threshold matter, the specific issues related to humanitarian parole and detention, have recently been reached by several other courts, in other non-binding, yet persuasive cases. *See Patel v. Tindall*, 2025 WL 2823607 *at 6 (W.D. Ky. Oct 3, 2025) (finding that

“an individual who has been paroled without first having been placed in expedited removal cannot later be designated for expedited removal.”); *Perez Guerra v. Woosley*, 2025 WL 3046187 (W. D. Ky. Oct 31, 2025); *Rodriguez Martinez v. Raycraft et al.*, 2025 WL 3511093 (W.D. Mich. Dec. 8, 2025); *Y-Z-L-H v. Bostock*, 792 F. Supp. 3d 1123 (D. Or. 2025); *Mata Velasquez v. Kurzdorfer*, 794 F. Supp. 3d 128, 146 (W.D.N.Y. 2025) (citations omitted) (addressing this issue, and granting the petitioner’s motion for preliminary injunction and ordering that the petitioner be released); see, e.g., *Y-Z-L-H*, 792 F. Supp. 3d at 1137–47 (addressing this issue, and granting the petitioner’s habeas petition and ordering that the petitioner be released from custody); *Loaiza Arias*, 2025 WL 3295385, at *2–4 (same); *Noori v. LaRose*, No. 25-cv-1824-GPC-MSB, 2025 WL 2800149, at *10–13 (S.D. Cal. Oct. 1, 2025) (same); *Munoz Materano v. Arteta*, No. 25 CIV. 6137 (ER), --- F. Supp. 3d ---, 2025 WL 2630826, at *14–17 (S.D.N.Y. Sept. 12, 2025) (same); *Gabriel B.M. v. Bondi*, No. 25-cv-4298 (KMM/EMB), 2025 WL 3443584, at *6–7 (D. Minn. Dec. 1, 2025) (addressing this issue, and granting the petitioner’s request for a preliminary injunction and ordering the petitioner’s release from custody); *Orellana v. Francis*, No. 25-cv-04212 (OEM), 2025 WL 2822640, at *2–3 (E.D.N.Y. Oct. 3, 2025) (addressing the issue in the context of a motion for reconsideration filed by the respondents, and affirming the court’s grant of habeas relief to the petitioner and the court’s order to release the petitioner).

42. The Immigration and Nationality Act “establishes the framework governing noncitizens’ entry into and removal from the United States, with regulations promulgated by the enforcing agencies providing further governance.” *Y-Z-L-H v. Bostock*, 792 F. Supp. At 1123.

43. The statute and applicable regulations set out specific mandatory guidelines that dictate how the government can place a person into expedited removal proceedings, under 8 U.S.C. § 1225(b)(1), or into regular removal proceedings under 8 U.S.C. § 1229(a), upon arriving at a port of entry. Indeed, “noncitizens who arrive at a port of entry without a visa or other entry document, like Petitioner, are deemed ‘inadmissible’ under 8 U.S.C. § 1182(a)(7)” due to their lack of entry documents. *Id.* at 1132 & n.7 (noting that “[d]epending on the circumstances, other categories of inadmissibility may also apply, but § 1182(a)(7) applies for noncitizens without proper documentation”).
44. Once a noncitizen is deemed inadmissible, “the immigration officer must order the noncitizen’s removal unless the noncitizen indicates an intention to apply for asylum or fear of prosecution.” *Id.* (citing 8 U.S.C. § 1225(b)(1)(A)(i)).
45. Further, section 1225(b)(2)(A) provides that “in 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 of this title.” 8 U.S.C. § 1225(b)(2)(A). However, “applicants for admission may be temporarily released on parole [into the United States] ‘for urgent humanitarian reasons or significant public benefit,’” as set forth in 8 U.S.C. § 1182(d)(5)(A). *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018) (quoting 8 U.S.C. § 1182(d)(5)(A)). The decision to grant parole pursuant to 8 U.S.C. § 1182(d)(5)(A) is determined “on a case-by-case basis.” 8 U.S.C. § 1182(d)(5)(A).
46. Then, “when the purpose of the parole has been served,” section 1182(d)(5)(A) provides that “the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that

of any other applicant for admission to the United States.” *Jennings*, 583 U.S. at 288 (quoting 8 U.S.C. § 1182(d)(5)(A)).

47. The process to terminate a previously granted parole is also captured in the regulations and applicable statutes. Pursuant to 8 C.F.R. § 212.5(e)(2)(i), which governs the “[t]ermination of parole,”

In cases not covered by paragraph (e)(1) of this section, upon accomplishment of the purpose for which parole was authorized or when in the opinion of one of the officials listed in paragraph (a) of this section, neither humanitarian reasons nor public benefit warrants the continued presence of the alien in the United States, parole shall be terminated upon written notice to the alien and he or she shall be restored to the status that he or she had at the time of parole.

8 C.F.R. § 212.5(e)(2)(i). In other words, parole can only be terminated if the purpose of parole is either accomplished, or humanitarian reasons and the public benefit no longer warrant parole.” *Rodriguez Martinez v. Raycraft et al.*, 1:25-cv-1504 at 8 (W.D. Mich. Dec. 8, 2025) (citing *Loaiza Arias v. LaRose*, No. 3:25-cv-02595-BTM-MMP, 2025 WL 3295385, at *3 (S.D. Cal. Nov. 25, 2025) (citing 8 C.F.R. § 212.5(e))).

48. Respondents have failed to follow the applicable statutory and regulatory framework necessary to terminate Petitioner’s parole. To start, the purpose of the Petitioner’s parole has not been accomplished. He fled Russia because of his political opinion. He followed the rules and presented himself at a port of entry instead of trying to cross without inspection. *See* Exh. A. After entering he was paroled out of detention and timely filed an asylum application. As a result, when Petitioner was recently arrested and detained, Petitioner was still seeking asylum.
49. Several district courts nationwide have further explained that similar to how grant of parole requires an individualized review, revocation of parole also requires a case-by-

case assessment to comply with the statute. See *Mata Velasquez*, 794 F. Supp. 3d at 146; *Y-Z-L-H*, 792 F. Supp. 3d at 1137–47; *Loaiza Arias*, 2025 WL 3295385, at *2–4; *Noori*, 2025 WL 2800149, at *10–13; *Munoz Materano*, No. 25 CIV. 6137 (ER), --- F. Supp. 3d ---, 2025 WL 2630826, at *14–17; *Gabriel B.M.*, No. 25-cv-4298 (KMM/EMB), 2025 WL 3443584, at *6–7; *Orellana v. Francis*, No. 25-cv-04212 (OEM), 2025 WL 2822640, at *2–3.

50. Respondents did not present any evidence to Petitioner when she was detained regarding their case-by-case determination regarding the specific revocation of his parole. Indeed, Petitioner appears to have been a collateral arrest as part of ICE’s enforcement operations against truck drivers, without any case-by-case determination.

51. Respondents failed to follow the requirements under the law to revoke Petitioner’s parole and as such they lacked the authority to arrest and detain him, unless there was another reason to arrest him. See *Mata Velasquez*, 794 F. Supp. 3d at 145; cf. *Norfolk S. Ry. Co. v. U.S. Dep’t of Lab.*, No. 21-3369, 2022 WL 17369438, at *6 (6th Cir. Dec. 2, 2022) (discussing that “an agency’s action that fails to observe the procedures required by its own regulations should be set aside” (citation omitted)); *Wilson v. Comm’r of Soc. Sec.*, 378 F.3d 541, 545 (6th Cir. 2004) (“It is an elemental principle of administrative law that agencies are bound to follow their own regulations[,] . . . [and] ‘[a]n agency’s failure to follow its own regulations tends to cause unjust discrimination and deny adequate notice and consequently may result in a violation of an individual’s constitutional right to due process.’” (additional internal quotation marks omitted) (quoting *Sameena, Inc. v. U.S. Air Force*, 147 F.3d 1148, 1153 (9th Cir. 1998))). Respondents had no other reason to arrest and detain Petitioner other than his status as a noncitizen.

52. Alternatively, even assuming, arguendo, that Respondents argue any noncitizen, regardless of whether they are already present and residing in the United States, is “an alien seeking admission” subject to mandatory detention under § 1225, several courts in this District, including in this Circuit, have rejected this argument. *See Appendix.*

Detention Provisions under the Immigration and Nationality Act

53. The Immigration and Nationality Act 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.

54. The INA authorizes detention for noncitizens under four distinct provisions:

- a. **Discretionary Detention.** 8 U.S.C. § 1226(a) generally allows for the detention of noncitizens who are in regular, non-expedited removal proceedings; however, permits those noncitizens who are not subject to mandatory detention to be released on bond or on their own recognizance.
- b. **Mandatory Detention of “Criminal” Noncitizens.** 8 U.S.C. § 1226(c) generally requires the mandatory detention of noncitizens who are removable because of certain criminal or terrorist-related activity after they have been released from criminal incarceration.
- c. **Mandatory Detention of “Applicants for Admission.”** 8 U.S.C. § 1225(b) generally requires detention for certain noncitizen applicants for admission, such as those noncitizens arriving in the U.S. at a port of entry or other noncitizens who have not been admitted or paroled into the U.S. and are apprehended soon after crossing the border.

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

Id. at § 1231(a)(2), (6).

55. This case concerns the detention provisions at §§ 1226(a) and 1225(b). Both detention provisions, §§ 1226(a) and 1225(b), 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

56. Following enactment of the IIRIRA, the Executive Office for Immigration Review (“EOIR”) drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225(b) and that they were instead detained under § 1226(a) after an arrest warrant was issued by the Attorney General. See Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) (“Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) *will be eligible for bond and bond redetermination*”) (emphasis added).

57. 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

¹ Section 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119–1, 139 Stat. 3 (2025).

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).² 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.

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

59. 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.

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).

60. 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.
61. 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.* at 303. “Federal regulations provide that alien detained under § 1226(a) receive bond hearings at the outset of detention.” *Id.* at 306; 8 C.F.R. § 236.1(d)(1), 1236.1(d)(1).
62. The Supreme Court’s analysis in *Jennings* demonstrates the difference for 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.
63. 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*, 2025 WL 2084238, at *2.

64. The “seeking admission” language, “necessarily implies some sort of present tense action.” *Martinez*, 2025 WL 2084238, at *6; *see also Matter of M- D-C-V-*, 28 I&N Dec. 18, 23 (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 verb tense is significant in construing statutes.”).
65. In other words, the plain language of § 1225 applies to immigrants currently seeking admission into the United States at the nation’s border or another point of entry. It does not apply to noncitizens “already present in the United States”—only § 1226 applies in those cases. *See Jennings*, 583 U.S. at 303.
66. When 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) (internal quotation marks and citation omitted). And “the words of the 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 its amendment to have real and substantial effect.” *Van Buren v. United States*, 593 U.S. 374, 393 (2021).

68. Indeed, Congress passed the Laken Riley Act (the “Act”) in January 2025. The Act amended several provisions of the INA, including §§ 1225 and 1226. Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025). Relevant here, the Act added a new category of noncitizens subject to mandatory detention under § 1226(c)—those already present in the United States who have also been arrested, charged with, or convicted of certain crimes. 8 U.S.C. § 1226(c)(1)(E); 8 U.S.C. § 1182(a)(6)(A). Of course, under the government’s position, these individuals are already subject to mandatory detention under § 1225—rendering the amendment redundant. Likewise, mandatory-detention exceptions under § 1226(c) are meaningful only if there is a default of discretionary detention—and there is, under § 1226(a). *See Rodriguez*, 2025 WL 1193850, at *12.
69. Additionally, “[w]hen Congress adopts a new law against the backdrop of a longstanding administrative construction, the court generally presumes that the new provision works in harmony with what came before.” *Monsalvo v. Bondi*, 604 U.S., 145 S. Ct. 1232, 1242 (2025). Congress adopted the Act against the backdrop of decades of agency practice applying § 1226(a) to immigrants like Petitioner, who are present in the United States but have not been admitted or paroled. *Rodriguez*, 2025 WL 1193850, at *15; *Martinez*, 2025 WL 2084238, at *4; 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) (“Despite being applicants for admission, aliens who are present without having been admitted or paroled . . . will be eligible for bond and bond redetermination.”).
70. Section 1226(a) applies by default to all persons “pending a decision on whether the [noncitizen] is to be removed from the United States.” Removal hearings for noncitizens under 1226(a) are held under § 1229a, which “decid[e] the inadmissibility or deportability

of a[] [noncitizen].” By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States.

71. The analysis and holding by the BIA in *Matter of Yajure Hurtado* has also consistently been rejected by district courts within the Fifth Circuit, and across the country, over the last several months. *See* Appendix.

72. This Court is not required, and should not, give deference to the recent Board decision cited in Respondent’s brief. 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 Enters. v. Raimondo*, 603 U.S. 369, 412 (2024). Rather, this Court can simply look to the Supreme Court’s own words in *Jennings* that held that for decades, § 1225 has applied only to noncitizens “seeking admission into the country”—i.e., new arrivals, and that this contrasts with § 1226, which applies to noncitizens “already in the country.” *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018).

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

Violation of the Due Process Clause of the Fifth Amendment
of the United States Constitution

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

74. The Due Process Clause asks whether the government’s deprivation of a person’s life, liberty, or property is justified by a sufficient purpose. Here, there is no question that the government has deprived Petitioner of his liberty.

75. The government's detention of Petitioner is unjustified. Respondents have not demonstrated that Petitioner needs to be detained. *See Zadvydas*, 533 U.S. at 690 (finding immigration detention must further the twin goals of (1) ensuring the noncitizen's appearance during removal proceedings and (2) preventing danger to the community). There is no credible argument that Petitioner cannot be safely released back to his community and family.
76. The *Matter of Yajure Hurtado* decision wrongly interprets the Immigration and Nationality Act.
77. This Court is not required to give deference to *Matter of Yajure 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 Enters. v. Raimondo*, 603 U.S. 369, 412 (2024).
78. Rather, this Court can simply look to the Supreme Court's own words in *Jennings* that held that for decades, § 1225 has applied only to noncitizens “seeking admission into the country”—i.e., new arrivals, and that this contrasts with § 1226, which applies to noncitizens “already in the country.” *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018). By keeping Petitioner detained today, his detention is unconstitutional as applied to him and in violation of his due process rights. Petitioner should have the opportunity to have a bond hearing before an Immigration Judge.
79. By issuing its decision in *Matter of Yajure Hurtado*, the BIA has taken nearly all bond authority away from Immigration Judges.

80. Even in *Maldonado Bautista et al v. Santacruz Jr. et al*, a District Court Judge certified a class action of bond eligible class members and provided a final judgment: all noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination. 5:25-cv-01873-SSS-BFM (C. D. Ca. Dec. 18, 2025).
81. Even though Petitioner is part of this bond eligible class membership and final judgment was entered on December 18, 2025, Immigration Judges are still refusing to hold or hear bond requests from bond eligible class members.
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 repeats and incorporates by reference all allegations above as though fully set forth fully 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.
86. 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.

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

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

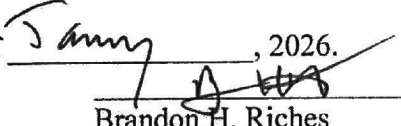
PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully request that this Honorable Court:

- A. Accept jurisdiction over this action;
- B. Order Respondents not to transfer Petitioner out of the Southern District of Mississippi during the pendency of these proceedings to preserve jurisdiction and access to counsel;
- C. Declare that Respondents' actions to detain Petitioner violate the Due Process Clause of the Fifth Amendment and violates the Immigration and Nationality Act;
- D. Issue a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 and order Respondents to schedule a bond hearing for Petitioner's removal proceedings within 5 days of the order and accept jurisdiction to issue a bond order, or immediately release Respondent;
- E. Award reasonable attorneys' fees and costs for this action; and
- F. Grant such further relief as the Court deems just and proper.

I affirm, under penalty of perjury, that the foregoing is true and correct.

Respectfully submitted this the 13th day of January, 2026.



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