

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS, EL PASO DIVISION**

MOHAMMED OSMAN MOHAMMED,

Petitioner,

v.

Pamela Bondi, Attorney General,

Kristi Noem, Secretary, U.S. Department of
Homeland Security,

Todd M. Lyons, Acting Director of Immigration
and Customs Enforcement,

Marisa Flores, Director, El Paso Field Office
Immigration and Customs Enforcement, and

Curtis Taylor, Major General, U.S. Army at Camp
Bliss,

Respondents.

Case No. 3:26-cv-167

**VERIFIED PETITION
FOR WRIT OF
HABEAS CORPUS**

Expedited Handling Requested

INTRODUCTION

1. Mohammed Osman Mohammed, by and through the undersigned attorney, hereby files this petition for a writ of habeas corpus and a complaint for declaratory and injunctive relief to require U.S. Immigration and Customs Enforcement (ICE) to release Petitioner from his illegal confinement.

2. Petitioner, Mr. Mohammed Osman Mohammed is a 29-year-old Ethiopian national who is seeking asylum in the United States.

3. Petitioner is a beloved community member who resides in Maple Grove, Hennepin County, Minnesota.

4. On January 6, 2026, Petitioner was surrounded and arrested by masked ICE agents while leaving a carwash.

5. Petitioner was swiftly transported from Minnesota to Texas. He is currently being unlawfully detained at the El Paso Processing Center at 8915 Montana Ave. in El Paso, Texas.

6. This case is one of thousands that have been filed nationwide stemming from the Government's unlawful detention of noncitizens under an inapplicable statute. Respondents are purportedly detaining Petitioner pursuant to 8 U.S.C. § 1225(b)(2), a statute that requires mandatory detention for "arriving aliens" who are "seeking admission" before an "examining immigration officer" at the border or a port of entry. Such detentions have been univocally rejected by courts in this district. *Mendoza-Menjivar v. Bondi*, 25-cv-2060-DAE (W.D. Tex. Jan. 12, 2026) (Ezra, J.); *Gonzalez Alvarez v. Noem*, 2026 WL 93972 (W.D. Tex. Jan. 9, 2026) (Pulliam, J.); *Guillen-Mora v. Lyons*, 2026 WL 94656 (W.D. Tex. Jan. 9, 2026) (Rodriguez, J.); *Acosta Dominguez v. Noem*, No. EP-25-CV-00741-DB, 2026 WL 67200 (W.D. Tex. Jan. 8, 2026) (Briones, J.); *Ramirez-Morales*, EP-25-cv-476-DCG-RFC, 2025 WL 3767065 (W.D. Tex. Dec. 30, 2025) (Guaderrama, J.); *Lopez Soto v. Noem*, 25-cv-1910, Dkt. 7 (W.D. Tex. Dec. 19, 2025) (Albright, J.); *Lopez Miranda v. Flores*, EP-25-cv-584-KC (W.D. Tex. Dec. 10, 2025) (Cardone, J.); *Vieira v. De Anda-Ybarra*, -- F. Supp. 3d --, 2025 WL 2937880 (W.D. Tex. Oct. 16, 2025) (Briones, J.). In these cases, and hundreds of others like them, federal courts have ordered that the respondents either release individuals like Mr. OSMAN or provide them with a bond hearing pursuant to 8 U.S.C. § 1226(a). *See generally*

Barco Mercado v. Francis, -- F. Supp. 3d --, 2025 WL 3295903, at *4 (S.D.N.Y. Nov. 26, 2025) (citing “350 cases decided by over 160 different judges sitting in about fifty different courts spread across the United States” who have rejected Respondents’ position).

7. Petitioner’s detention on this basis violates the plain language of the Immigration and Nationality Act (INA). Section 1225(b)(2)(A) does not apply to individuals like Petitioner who previously entered and are now residing in the United States. Instead, such individuals are subject to a different statute, § 1226(a), that allows for release on conditional parole or bond.

8. Respondents’ new legal interpretation is plainly contrary to the statutory framework and contrary to decades of agency practice. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be released, or, in the alternative, requiring Respondents to provide a bond hearing within seven days.

JURISDICTION AND VENUE

9. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 1361 (federal employee mandamus action); 28 U.S.C. § 1651 (All Writs Act); 28 U.S.C. § 2241 (habeas corpus); Art. I, § 9, cl. 2 of the U.S. Constitution (Suspension Clause); 5 U.S.C. § 702 (waiver of sovereign immunity); and 28 U.S.C. § 2201 (Declaratory Judgment Act).

10. Federal question jurisdiction exists because Mr. Osman Mohammed seeks to challenge his custody as a violation of the Constitution and the Immigration and Nationality Act, 8 U.S.C. § 1101 et seq.

11. Federal district courts have jurisdiction under 28 U.S.C. § 2241 to hear habeas petitions by noncitizens challenging the lawfulness or constitutionality of their detention by the Department of Homeland Security (DHS). *Denmore v. Kim*, 538 U.S. 510, 516–17

(2003); *Jennings v. Rodriguez*, 583 U.S. 281, 292–293 (2018); and *Nielsen v. Preap*, 586 U.S. 392, 401–402 (2019).

12. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b), (e)(1)(B), and 2241(d) because Mr. Osman Mohammed is detained within the Western District of Texas.

13. Venue is also proper in this Court pursuant to 28 U.S.C. § 1391(e)(1)(A), because Respondents are operating in this district.

PARTIES

14. Petitioner is a citizen of Ethiopia and a resident of Maple Grove, Hennepin County, Minnesota. Mr. Osman Mohammed was detained on January 6, 2025 in Minnesota. He is currently being held at the El Paso Processing Center, a detention facility in El Paso, Texas. Petitioner is under the direct control of the respondents and has no scheduled release date.

15. Respondent Pamela Bondi is being sued in her official capacity as the Attorney General of the United States and the head of the Department of Justice. Attorney General Bondi shares responsibility for implementation and enforcement of the immigration detention statutes, along with Respondent Noem. Attorney General Bondi is a legal custodian of Mr. Osman Mohammed.

16. Respondent Kristi Noem is being sued in her official capacity as the Secretary of the Department of Homeland Security. In this capacity, Secretary Noem is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103(a), routinely transacts business in the Western District of Texas, supervises the ICE field offices, and is legally responsible for pursuing Mr. Osman Mohammed's detention and removal. As such, Respondent Noem is a legal custodian of Mr. Osman Mohammed.

17. Respondent Todd M. Lyons is the Acting Director of U.S. Immigration and Customs Enforcement and is sued in his official capacity. Defendant Lyons is responsible for Petitioner's detention.

18. Respondent Marisa Flores is being sued in her official capacity as the Field Office Director for the El Paso Field Office for ICE within DHS. In that capacity, Field Office Director Marisa Flores has supervisory authority over the ICE agents responsible for detaining Mr. Osman Mohammed. The address for the El Paso Field Office is 1541 Montana Ave, Suite E, El Paso, Texas, 79936.

19. Respondent Major General Curtis Taylor is being sued in his official capacity as the Commanding General responsible for the El Paso Processing Center within the U.S. Army Fort Bliss. Because Petitioner is detained in the El Paso Processing Center, Major General Taylor has immediate day-to-day control over Petitioner.

FACTUAL ALLEGATIONS

20. Petitioner is a resident of Maple Grove, MN and a citizen of Ethiopia. He has lived continuously in the United States since October 2023.

21. Upon his arrival to the United States, Mr. Osman Mohammed was met by U.S. Customs & Border Patrol and received an Order of Release on Recognizance.

22. Mr. Osman Mohammed was issued a Notice to Appear in removal proceedings and timely filed an application for asylum, withholding of removal and protections under the Convention Against Torture.

23. He is represented in those proceedings by attorney Gregory S. Bachmeier, who lives and works in Minnesota.

24. Mr. Osman Mohammed's next hearing is currently set for January 28, 2026.

25. Mr. Osman Mohammed has complied with all aspects of the asylum process and has not been issued a final order of removal.

26. On April 23, 2025, Mr. Osman Mohammed was granted Temporary Protected Status. The designation of Ethiopia for Temporary Protected Status expired on December 12, 2025, but the termination is not effective until February 13, 2026. Termination of Designation of Ethiopia for Temporary Status, 90 Fed. Reg. 58028 (December 15, 2025). Mr. Osman Mohammed is therefore within the 60 day “grace period” afforded to those with TPS status.

27. Mr. Osman Mohammed has a wide network of family and friends in Minnesota who will ensure his return to court. His brother, aunt, cousins, and their children all reside in the Twin Cities area. He is a devoted uncle and regularly takes his nieces and nephews to the park. Mr. Osman Mohammed attends a local mosque and regularly volunteers there. In addition, he volunteers at his local Oromo Community Center.

28. Upon a search of Petitioner’s public criminal history on the Minnesota Court Record Online on January 25, 2026, Mr. Osman Mohammed has no convictions for crimes of moral turpitude, felonies, or misdemeanors against a person. Mr. Osman Mohammed has only a single petty misdemeanor violation on his record for driving with a wireless communication device in his hand.

29. Respondent ICE arrested Mr. Osman Mohammed on January 6, 2026, when he was exiting a carwash. The agents were masked and arrived in unmarked vehicles.

30. Mr. Osman Mohammed complied with the officers’ commands. He was escorted into an unmarked vehicle and taken into federal custody.

31. Upon information and belief, Respondent ICE arrested Mr. Osman Mohammed without a warrant.

32. This arrest is part of an operation in Hennepin and Ramsey counties called “Operation Metro Surge.” This operation has involved hundreds of masked, unidentified individuals in unmarked vehicles (many with illegally covered or mismatched license plates) holding themselves out as ICE agents but largely refusing to identify themselves by name or to present warrants, physically assaulting pedestrians, pepper spraying and arresting citizen observers, hitting passersby with vehicles, and generally attempting to take as many immigrants as possible into custody regardless of the constitutionality of their actions. *See Tincher et. al. v. Noem*, No. 25-cv-04669 (D. Minn. Jan. 16, 2026).

33. Since the operation began on December 1, 2025, the number of immigration officials in the Twin City metro area has increased fourfold. These new agents have brought a similarly massive increase in unconstitutional, unlawful, and downright violent behavior towards citizens and non-citizens alike. The people of Minnesota—of all races, nationalities, and citizenship status—are united in their shock and fear at the events of the past six weeks and are begging for the attacks on their community to stop.

34. Respondents have used warrantless arrests to remove a massive number of community members from their homes and place them in detention of indeterminate length. Given the rapidity of this action, Respondents are purportedly running out of physical space to continue detaining people. As a result, detainees are held in a cramped federal building and then swiftly sent to facilities far away from Minnesota, often in a matter of hours.

35. Mr. Osman Mohammed was quickly transferred from Minneapolis, Minnesota to the ERO El Paso Camp East Montana detention facility El Paso, Texas. He was then

transferred to the El Paso Processing Center in EL Paso. He is being held far away from family and local legal counsel.

36. Detained immigrants have reported violent physical and sexual abuse at Camp East Montana, as well as spoiled or partially frozen food, squalid and unsafe living conditions, a lack of access to basic hygiene products, and lack of access to medical care. Haddy Gassama, *Detained Immigrants Detail Physical Abuse and Inhumane Conditions at Largest Immigration Detention Center in the U.S.*, ACLU (Dec. 8, 2025). Three detainees have died in the past two months, one of them apparently murdered. Jeff Abbott, *Nicaraguan man arrested by ICE in Minnesota dies at Camp East Montana*, El Paso Times (Jan. 18, 2026), <https://www.elpasotimes.com/story/news/immigration/2026/01/18/third-immigrant-dies-at-ice-camp-east-montana-in-el-paso-victor-manuel-diaz-of-nicaragua/88243759007/>.

37. Mr. Osman Mohammed poses no risk to society and has strong connections to Hennepin County, including his family, friends, and larger community.

38. Detaining Mr. Osman Mohammed is an expensive and pointless endeavor. He respectfully seeks the opportunity to return to his home in Minneapolis and to continue following the legal processes set up by Congress and DHS for immigrants to seek status in this country.

REQUIREMENTS OF 28 U.S.C. § 2243

39. 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).

40. The Court must grant a petition for writ of habeas corpus or issue an order to show cause to the respondents “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause 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.*

41. Courts have jurisdiction to hear habeas petitions filed by noncitizens who have no final removal order, whose challenges to their arrest and detention are “independent of any future removal order.” *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *3 (W.D. Tex. Sept. 22, 2025). “[T]he Due Process Clause applies to all ‘persons’ within the United States, including [immigrants], whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

EXHAUSTION OF REMEDIES

42. No statutory requirement of administrative exhaustion applies to Petitioner’s case. *See, e.g., L.G. v. Choate*, 744 F. Supp. 3d 1172, 1181 (D. Colo. 2024) (noting that in habeas cases under 28 U.S.C. § 2241, “the government admits administrative exhaustion is not required by statute”). Where, as here, there are no prescribed administrative remedies to which he could resort, Petitioner is also not bound by any judicially-created exhaustion rule. *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).

43. DHS has publicly and repeatedly taken the firm position that noncitizens like Petitioner, who entered without inspection, are subject to mandatory detention under

8 U.S.C. § 1225. The Executive Office for Immigration Review has affirmed that view. The Board of Immigration Appeals has adopted the same position, holding 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). Thus, under the BIA’s interpretation, Petitioner is ineligible for bond as a noncitizen who entered the United States without inspection, and thus there are no administrative remedies that he could exhaust before seeking habeas relief. *See Singh v. Lewis*, 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*, 797 F. Supp. 3d 771, 789 (E.D. Mich. 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.”).

44. Additionally, administrative exhaustion is not required in this case because neither an immigration judge nor the Board of Immigration Appeals can rule on Petitioner’s due process claims raised in this petition. *See Matter of R-A-V-P-*, 27 I&N Dec. 803, 804 n.2 (BIA 2020) (holding that IJs and the BIA lack 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.”); *see also Gonzalez v. O’Connell*, 355 F.3d 1010, 1017 (7th Cir. 2004) (noting that “the BIA has no jurisdiction to adjudicate constitutional issues”).

45. Appealing the IJ's bond denial to the BIA, which will necessarily deny it pursuant to *Yajure Hurtado*, would be plainly futile. To require Petitioner to file a bond appeal that is guaranteed to fail and then make him wait 6–12 months (or more) for that inevitable denial only underscores the nature of the futility here, given that Petitioner's immigration case will likely be over by that time anyway, leaving him without effective recourse to challenge his unlawful detention. *See Lopez-Campos*, 797 F. Supp. 3d at 779.

LEGAL FRAMEWORK

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

47. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

48. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under § 1225(b)(2).

49. 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).

50. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2). 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, 3009–582 to 3009–583, 3009–585. Section

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

51. 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 § 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).

52. Thus, in the decades that followed, most people who entered without inspection and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). 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 IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply “restates” the detention authority previously found at § 1252(a)).

53. On July 8, 2025, ICE, “in coordination with” the Department of Justice, announced a new policy that rejected well-established understanding of the statutory framework and reversed decades of practice.

54. 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). *Available at* <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-forapplications-for-admission>. The policy applies regardless of when a person is

apprehended, and it affects those who have resided in the United States for months, years, and even decades.

55. On September 5, 2025, the BIA adopted this same position in a published decision, *Matter of Yajure Hurtado*. There, the Board held that all noncitizens who entered the United States without admission or parole are subject to detention under § 1225(b)(2)(A) and are ineligible for IJ bond hearings. 29 I&N Dec. 216 (BIA 2025).

56. Even before ICE or the BIA introduced these nationwide policies, IJs in the Tacoma, Washington, immigration court stopped providing bond hearings for persons who entered the United States without inspection and who have since resided here. There, the U.S. District Court in the Western District of Washington found that such a reading of the INA is likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025).

57. Subsequently, court after court has adopted the same reading of the INA's detention authorities and rejected ICE's and EOIR's new interpretation. *See, e.g., Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v.*

Noem, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025).

58. Courts have uniformly rejected DHS’s and EOIR’s new interpretation because it defies the INA. As the *Rodriguez Vazquez* court and others have explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner. 779 F. Supp. 3d at 1257.

59. Section 1226(a) applies by default to all persons “pending a decision on whether the [noncitizen] is to be removed from the United States.” These removal hearings are held under § 1229a, to “decid[e] the inadmissibility or deportability of a[] [noncitizen].”

60. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)’s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a). As the *Rodriguez Vazquez* court explained, “[w]hen Congress creates ‘specific exceptions’ to a statute’s applicability, it ‘proves’ that absent those exceptions, the statute generally applies.” *Rodriguez Vazquez*, 779 F. Supp. 3d at 1257 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)); *see also Gomes*, 2025 WL 1869299, at *7.

61. Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole.

62. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. The statute’s entire framework is premised on inspections at the border of people who are “seeking admission” to the United States. 8 U.S.C.

§ 1225(b)(2)(A). The Supreme Court has explained that this mandatory detention 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 admissible.” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

63. This Court and the majority around the country have made clear that 8 U.S.C. § 1225(b)(2) only authorizes detention for noncitizens who are at the border seeking physical entry at the time of detention, not those who have lived within the United States for more than two years, and whose detention is discretionary and governed by 8 U.S.C. § 1226(a).

In recent weeks, courts across the country have held that this new, expansive interpretation of mandatory detention under the INA is either incorrect or likely incorrect. *See Lopez-Campos v. Raycraft*, — F. Supp. 3d —, — n.5, 2025 WL 2496379, at *8 n.5 (E.D. Mich. Aug. 29, 2025) (collecting twelve such decisions); *see, e.g., Jimenez v. FCI Berlin, Warden*, — F. Supp. 3d —, — & n.9, 2025 WL 2639390, at *10 & n.9 (D.N.H. Sept. 8, 2025). That includes courts in the Fifth Circuit. *Lopez Santos*, 2025 WL 2642278, at *5; *Kostak v. Trump*, No. 25-cv-1093, 2025 WL 2472136, at *3 (W.D. La. Aug. 27, 2025).

Lopez-Arevelo v. Ripa, 801 F. Supp. 3d 668, 675 (W.D. Tex. 2025).

64. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like Petitioner, who have already entered several years prior and were residing in the United States at the time they were apprehended.

65. Nor do any other provisions of law justify Petitioner’s detention without a bond hearing. Only under certain circumstances are immigrants subject to ongoing detention without a bond hearing. *See, e.g.,* 8 U.S.C. § 1226(c) (individuals with certain criminal convictions may be detained without a bond hearing for the pendency of removal proceedings) and 8 U.S.C. § 1225(b)(1)(B)(iii)(IV) (authorizing mandatory detention of immigrants in expedited removal proceedings).

66. None of the circumstances justifying mandatory detention are present here. In order to bring a detained individual under the purview of 8 U.S.C. § 1226(c), an individual's criminal conviction must be one enumerated in the INA under 8 U.S.C. §§ 1182(a)(2), 1182(a)(3)(B), 8 U.S.C. §§ 1227(a)(2)(A)(i-iii), or 8 U.S.C. §§ 1227(a)(2)(B-D). These specified offenses include crimes of moral turpitude, violations of laws regulating controlled substances, terroristic activities, firearm offenses, espionage, treason, and other serious crimes. *Id.* Crimes of moral turpitude do not apply in situations where the maximum sentence for the crime was less than one year, and the person was sentenced to less than six months of imprisonment. 8 U.S.C. § 1182(a)(2)(A)(ii)(II). These violations all fall under the enumerated exception of 8 U.S.C. § 1182(a)(2)(A)(ii)(II).

67. Mr. Osman Mohammed has not been convicted of any crime of moral turpitude. Petitioner has no disqualifying criminal record, and his mandatory detention cannot be justified under 8 U.S.C. § 1226(c).

68. Nor can Respondents justify mandatory detention under § 1225(b)(1). Section 1225(b)(1) requires detention for certain aliens undergoing expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1), (b)(1)(B)(ii), (b)(1)(B)(iii)(IV). Petitioner has not been placed in expedited removal proceedings. Thus, he cannot be held in mandatory detention pursuant to 8 U.S.C. § 1225(b)(1)(B)(iii)(IV) (authorizing mandatory detention of immigrants in expedited removal proceedings). *See Alvarez*, 2026 WL 93972, at *6 (“Respondents cannot detain Petitioners in connection with expedited removal proceedings that do not exist.”).

69. As they hold Petitioner without a bond hearing, Respondents are wrongly asserting 8 U.S.C. § 1225(b) as a basis for detaining Petitioner, when instead his detention could only be pursuant to 8 U.S.C. § 1226. *See id.* (“Because [§ 1225(b)] is inapplicable

under the facts, Petitioners' present detention necessarily falls under 8 U.S.C. § 1226, which entitles them to a bond hearing.); *see also Jennings v. Rodriguez*, 583 U.S. 281, 303 (2018) (distinguishing between mandatory detention for noncitizens "seeking to enter the country" under 1225(b), and noncitizens who, per 1226, are "already in the country" and thus who are entitled to bond hearings pursuant to pending the outcome of their removal proceedings, subject to criminal record exceptions). Under this default rule, detention is not mandatory, and immigrants are constitutionally entitled to a bond hearing. *See Acosta Dominguez v. Noem*, No. EP-25-CV-00741-DB, 2026 WL 67200 (W.D. Tex. Jan. 8, 2026).

CLAIMS FOR RELIEF

COUNT ONE

Violation of the Due Process Clause of the Fifth Amendment

70. Petitioner realleges and incorporates by reference the allegations of fact set forth above.

71. Mr. Osman Mohammed has due process rights as a resident of the United States. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

72. Federal courts use the three-part test in *Matthews v. Eldridge* to determine whether civil detention violates a detainee's due process rights. 424 U.S. 319 (1976). The elements of this test are: (1) the private interest that the official action affects; (2) the risk that the procedures used will result in an erroneous deprivation of the private interest, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the Government's interest in following the existing procedures, both in achieving their objectives and in the potential burdens of an alternate procedure. *Id.* at 335.

73. Here, all three factors favor the petitioner.

74. First, Mr. Osman Mohammed has a significant private interest at stake. A person's interest in freedom from physical detention is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004); *see also Zadvydas*, 533 U.S. at 690, ("Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects."). He is currently being detained in conditions that are indistinguishable from criminal incarceration. He is separated from family, friends, and local legal counsel. Courts assessing similar cases have concluded that detention in this manner weighs heavily towards granting relief. *Chinchilla v. De Anda-Ybarra*, No. EP-25-CV-00548-DB, 2025 WL 3645178, at *4 (W.D. Tex. Dec. 16, 2025) ("Petitioner possess a strong liberty interest in his freedom from detention because he has established a life here[.]").

75. Second, there is a strong risk of erroneous deprivation under DHS's current procedure. Petitioner is currently being detained under a policy which precludes him from accessing a bond hearing. Courts have held that detention under such circumstances creates a high risk of erroneous deprivation of a petitioner's freedom. *Vieira v. De Anda-Ybarra*, No. EP-25-CV-00432-DB, 2025 WL 2937880, at *7 (W.D. Tex. Oct. 16, 2025) ("Section 1225(b)(2) as applied creates a substantial risk of erroneous deprivation of Petitioner's interest in being free from arbitrary confinement pending resolution of his removal proceedings."). The value of additional procedural safeguards in such circumstances is significant. *See Garcia v. Noem*, No. EP-25-CV-00624-DB, 2025 WL 3645179, at *4 (W.D. Tex. Dec. 16, 2025) (finding that this factor also weighs in petitioner's favor, as "the value of additional safeguards is high given that it will allow an immigration judge conducting a bond hearing to make a determination on specific facts whether continued detention is necessary").

76. Lastly, the Government has no legitimate interest in refusing to follow its own rules. Mr. Osman Mohammed poses no safety threats to the community. Releasing him, or holding a hearing to release him on bond, would in fact *save* the government the resources and expense of continuing to imprison him. Any interests the Government possesses could be better vindicated by a bond hearing. *See Garcia*, 2025 WL 3645179, at *4 (“The government’s interest is generally protected by affording bond hearings like the one Petitioner is requesting.”); *Chinchilla*, 2025 WL 3645178, at *5 (same).

77. The placement of Mr. Osman Mohammed in mandatory detention pending the resolution of his proceedings in immigration court violates his constitutional rights to due process guaranteed in the Fifth Amendment.

COUNT TWO
Violation of the Immigration and Nationality Act, 8 U.S.C. § 1226

78. Petitioner realleges and incorporates by reference the allegations of fact set forth above.

79. Respondents violate the Immigration and Nationality Act by attempting to hold Petitioner in mandatory detention through 8 U.S.C. § 1225(b)(2). 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. It does not apply to those, such as Petitioner, who have been residing in the United States for several years 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. But Respondents’ actions here also violate § 1226(a), because Respondents have failed to conduct a bond hearing for Petitioner.

80. Mr. Osman Mohammed is detained, notwithstanding his continuous presence in the United States for more than the last two years without being afforded an opportunity to advocate for his release back into his community, as the law requires.

COUNT THREE
Violation of the Administrative Procedure Act

81. Mr. Osman Mohammed realleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.

82. The APA provides that a “reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A).

83. The APA provides that a “reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . without observance of procedure required by law.” 5 U.S.C. § 706(2)(D).

84. 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 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 could properly be detained under § 1226(a), but would then be eligible for release on bond unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

85. Nonetheless, the Board has adopted a policy and practice of applying § 1225(b)(2) to Petitioner and others in the same position.

86. Respondents through its recent administrative decision failed to articulate any reasoned explanations for new interpretation of the Act. The Board’s decision represents a

change in the agencies' policies and positions that negates the plain language of the Act, the will of Congress, and decades of administrative precedent.

87. The application of § 1225(b)(2) to Mr. Osman Mohammed is arbitrary, capricious, and not in accordance with law, and as such, it violates the APA. *See* 5 U.S.C. § 706(2).

PRAYER FOR RELIEF

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

- a. Assume jurisdiction over this matter;
- b. Enjoin Petitioner's removal outside the Western District of Texas pending resolution of this matter;
- c. Issue an Order to Show Cause ordering Respondents to show cause within three days as to why this Petition should not be granted as required by 28 U.S.C. § 2243;
- d. Issue a writ of habeas corpus requiring that Respondents immediately cease their unlawful detention, release Petitioner, and provide for his safe return back to Minnesota;
- e. In the alternative, issue a writ of habeas corpus requiring Petitioner's immediate release unless Respondents provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) within 7 days, at which Respondents bear the burden of justifying Petitioner's continued detention by clear and convincing evidence;
- f. Enjoin Respondents from denying bond on the basis of § 1225(b) or *Yajure Hurtado*;

- g. Enjoin Respondents from imposing any conditions of release, including but not limited to a GPS ankle monitor, unless approved by an immigration judge at the bond hearing;
- h. Enjoin Respondents from re-detaining Petitioner without first affording him a pre-deprivation hearing before a neutral decisionmaker;
- i. Declare that Petitioner's continued detention violates the INA and the Due Process Clause of the Fifth Amendment;
- j. Grant any other and further relief that this Court deems just and proper.

Respectfully submitted,

Date: January 26, 2026

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*Application for Pro Hac Vice admissions forthcoming

**Plaintiff is represented by a clinic operated by Texas A&M University School of Law, but this document does not purport to present the school's institutional views, if any.

**Verification by Someone Acting on
Petitioner's Behalf Pursuant to 28 U.S.C. § 2242**

I am submitting this verification on behalf of Petitioner because I am Petitioner's attorney. I have discussed the factual assertions in this petition with Petitioner's family and friends, who are also acting on Petitioner's behalf and who I understand to have personal knowledge of the facts alleged herein. I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus, including the statements regarding Petitioner's detention status, are true and correct to the best of my knowledge.

Date: January 26, 2026

/s/ Lyle Q. Cherneff