

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

JOSE PEREZ LUNA,

PETITIONER,

v.


U.S. DEPARTMENT OF HOMELAND SECURITY, KRISTI NOEM, in her official capacity as Secretary of the Department Homeland Security; U.S. DEPARTMENT OF JUSTICE, PAM BONDI, in her official capacity as U.S. Attorney General; U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, ROBERT CERNA, in his official capacity as Field Office Director of Enforcement and Removal Operations, Dallas; TODD LYONS, in his official capacity as the Acting Director of U.S. Immigration and Customs Enforcement; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; MARCELLO VILLEGAS in his official capacity as Warden of the Bluebonnet Detention Facility.

RESPONDENTS.

Case No. 1:26-cv-00045

**PETITION FOR WRIT OF
HABEAS CORPUS**

INTRODUCTION

Petitioner Jose Leonardo Perez Luna is a native and citizen of Venezuela. *See* Notice to Appear (“Form I-862”). Petitioner entered the United States on or about November 7, 2021, at or around Eagle Pass, Texas and has remained continuously present in the United States since that date. *See* Record of Deportable/ Inadmissible Alien (“Form I-213”). Petitioner is currently in the physical custody of Respondents at the Bluebonnet Detention Facility, located at 400 2nd Street, Anson, TX 79501 under A-Number  *See* Form I-862.

Petitioner has recently been detained by Immigration and Customs Enforcement (“ICE”), however he has been placed in removal proceedings since entry in 2021, and has been charged, *inter alia*, as inadmissible for having entered the United States without inspection, pursuant to 8 U.S.C. § 1182(a)(6)(A)(i).

Petitioner is unlawfully detained as a result of a recent change in legal interpretation adopted by the Department of Homeland Security (“DHS”) and the Executive Office for Immigration Review (“EOIR”). Relying on *Matter of Q. Li* and *Matter of Yajure Hurtado*, the Government has asserted and the Immigration Judge has agreed that, notwithstanding Petitioner’s otherwise eligibility for release on bond, Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A).

Immigration Judges across the country, including in Texas, have concluded that they lack jurisdiction on the theory that individuals like Petitioner are “applicants for admission” who are “seeking admission,” and therefore subject to mandatory detention under § 1225(b)(2)(A), despite Petitioner’s nearly five years of residence in the United States.

Petitioner’s detention violates the plain language and statutory structure of the Immigration and Nationality Act (“INA”). Section 1225(b)(2)(A) applies to individuals who are arriving at the border or who are actively seeking admission into the United States. It does not apply to individuals, like Petitioner, who previously entered the United States and have long resided within the country.

Detention of such individuals is instead governed by 8 U.S.C. § 1226(a), which expressly authorizes release on bond or conditional parole pending removal proceedings. Section 1226(a) applies to individuals charged as inadmissible under § 1182(a)(6)(A)(i) based on entry without inspection precisely the charge lodged against Petitioner.

Respondents’ new interpretation improperly collapses these distinct statutory schemes and contravenes the INA’s text, structure, and decades of consistent agency practice applying

§ 1226(a) to noncitizens who entered the United States without inspection and were later apprehended while residing within the United States. By departing from the statutory scheme Congress enacted, Respondents have rendered Petitioner's continued detention unlawful.

Accordingly, Petitioner seeks a writ of habeas corpus ordering Respondents to release Petitioner from custody unless Respondents provide Petitioner with an individualized bond hearing under 8 U.S.C. § 1226(a) within five (5) days.

In the alternative, Petitioner respectfully requests that the Court issue an order to show cause directing Respondents to explain why the writ should not be granted within three (3) days, pursuant to 28 U.S.C. § 2243.

CUSTODY

1. Mr. Perez-Luna is in the physical custody of Respondents Robert Cerna, Field Office Director of Enforcement and Removal Operations for U.S. Immigration and Customs Enforcement ("ICE"), a component of the Department of Homeland Security ("DHS"), and Marcello Villegas, Warden of the Bluebonnet Detention Facility in Anson, Texas. At the time of filing this Petition, Petitioner is detained at the Bluebonnet Detention Facility in Anson, Texas. The Bluebonnet Detention Facility operates pursuant to a contract with DHS to detain noncitizens, including Petitioner. Mr. Perez-Luna is under the direct control and supervision of Respondents and their agents.

JURISDICTION

2. The action arises under the Constitution of the United States, the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et seq.*
3. This Court has subject-matter jurisdiction pursuant to (habeas corpus), 28 U.S.C. § 2241 because Petitioner is in custody under color of authority of the United States and challenges the legality of that custody as contrary to the Constitution and laws of the United States.

This Court also has jurisdiction under 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (the Suspension Clause).

4. This action seeks to remedy violations of Petitioner's rights under the Fifth Amendment to the United States Constitution, including the denial of due process of law resulting from Petitioner's unlawful detention.
5. 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

6. Venue is proper in this Court because, at the time this Petition was filed, Petitioner was detained at the Bluebonnet Detention Facility, located at 400 2nd Street, Anson, TX 79501, which is within the territorial jurisdiction of the United States District Court for the Northern District of Texas. *See Rumsfeld v. Padilla*, 542 U.S. 426, 441 (2004) (citing *Ex Parte Endo*, 323 U.S. 283 (1944)).
7. Venue is also proper pursuant to 28 U.S.C. § 1391(e) because Respondents are officers, employees, or agencies of the United States acting in their official capacities, and a substantial part of the events or omissions giving rise to the claims asserted herein occurred within the Northern District of Texas.

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

8. Pursuant to 28 U.S.C. § 2243, this Court must either grant the writ of habeas corpus or issue an order directing Respondents to show cause why the writ should not be granted, unless it appears from the Petition that he is not entitled to relief. Section 2243 further requires that any return to an order to show cause be filed "within three days unless for good cause additional time, not exceeding twenty days, is allowed."

9. The writ of habeas corpus has long been recognized as a fundamental safeguard against unlawful detention by the government. The Supreme Court has described the Great Writ as “perhaps the most important writ known to the constitutional law of England, 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).
10. Petitioner satisfies the “in custody” requirement of 28 U.S.C. § 2241 because he is presently arrested and detained by Respondents and their agents at the Bluebonnet Detention Facility.

PARTIES

11. Petitioner Jose Leonardo Perez Luna is a citizen of Venezuela who has been in immigration detention since December 5, 2025. *See* ICE Form I-830E. After arresting Petitioner, he was taken into ICE Custody at the Bluebonnet Detention Facility in Anson, Texas, ICE did not set bond. Petitioner has requested review of his custody status by an Immigration Judge (“IJ”). Immigration Judges including the one assigned to Petitioner’s case has denied bond to noncitizens on the ground that the IJ lacked jurisdiction because individuals like Petitioner have been deemed an “applicant for admission” under DHS’ policy. Petitioner has resided continuously in the United States since 2021.
12. Respondent Robert Cerna is the Director of the Dallas Field Office of ICE’s Enforcement and Removal Operations division. As such, Mr. Cerna is Petitioner’s immediate custodian and is responsible for implementing detention, custody, and removal determinations. He is named in his official capacity.
13. Respondent Todd Lyons is the Acting Director of U.S. Immigration and Customs Enforcement. He is responsible for nationwide ICE detention policies and practices that govern Petitioner’s custody. He is sued in his official capacity.
14. Respondent Kristi Noem is named in her official capacity as the Secretary of the Department of

Homeland Security. In this capacity, she is responsible for the for the implementation and enforcement of the Immigration and Nationality Act (INA); routinely transacts business in the Southern District of Texas; is legally responsible for pursuing any effort to detain and remove Petitioner; and oversees ICE, which is responsible for Petitioner's detention. Ms. Noem has ultimate custodial authority over Petitioner.

15. Respondent Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.
16. Respondent Pam Bondi is named in her official capacity as the Attorney General of the United States. In this capacity, she is responsible for the administration of the immigration laws as exercised by the Executive Office for Immigration Review ("EOIR"), pursuant to 8 U.S.C. § 1103(g). She routinely transacts business in the Southern District of Texas and is legally responsible for administering Petitioner's removal and custody proceedings and for the standards used in those proceedings. As such, she is the custodian of Petitioner.
17. Respondent Executive Office for Immigration Review (EOIR) is the federal agency responsible for adjudicating removal proceedings and custody determinations, including bond redetermination hearings.
18. Marcello Villegas is the Warden of the Bluebonnet Detention Facility in Anson, Texas, where Petitioner is currently detained. He has immediate physical custody of Petitioner. He is sued in his official capacity.
19. All respondents are named in their official capacities.

LEGAL FRAMEWORK

I. Detention and Bond Under the Immigration & Nationality Act

20. The INA establishes three principal detention frameworks applicable to the vast majority of noncitizens placed in removal proceedings.

21. First, 8 U.S.C. § 1226 governs detention of noncitizens placed in standard removal proceedings under 8 U.S.C. § 1229a. Section 1226(a) authorizes discretionary detention and permits release on bond or conditional parole following an individualized custody determination by an Immigration Judge (“IJ”). *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 1003.19(a), 1236.1(d). By contrast, § 1226(c) mandates detention of a narrow class of noncitizens with specified criminal histories.
22. Second, 8 U.S.C. § 1225(b) governs detention of certain noncitizens encountered at or near the border and those subject to expedited removal under § 1225(b)(1), as well as other recent arrivals deemed to be “seeking admission” under § 1225(b)(2).
23. Third, 8 U.S.C. § 1231 governs detention following the entry of a final order of removal, including detention during the removal period and, in limited circumstances, thereafter.
24. This case concerns the proper interpretation and application of the detention provisions in 8 U.S.C. §§ 1226(a) and 1225(b)(2).

II. Historical Context and Agency Interpretation

25. Sections 1226(a) and 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”), Pub. L. No. 104-208, Div. C, §§ 302-303, 110 Stat. 3009-546. Section 1226(a) was most recently amended by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).
26. Following IIRIRA’s enactment, the Executive Office for Immigration Review (“EOIR”) promulgated regulations clarifying that, as a general rule, noncitizens who entered the United States without inspection and were later placed in removal proceedings were detained pursuant to § 1226(a), not § 1225. *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).

27. Consistent with those regulations, for decades immigration courts uniformly exercised bond jurisdiction over noncitizens who entered without inspection and were later apprehended within the United States, unless mandatory detention under § 1226(c) applied. This practice reflected both post-IIRIRA implementation and decades of pre-IIRIRA practice. *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) “restates” prior detention authority).
28. For decades, (i.e. since IIRIRA was passed in 1996) two indisputable facts coexisted in immigration proceedings throughout the country: (1) Immigration Judges have been granting bond to noncitizens who had entered the country without inspection, and therefore, were inadmissible under INA § 212(a)(6)(A)(G), (colloquially referred to as an “EWI” charge); and (2) All individuals who are EWI have fallen under the definition of an “applicant for admission” under INA § 235(a)(1). These two indisputable facts coexisted for nearly thirty years because the INA along with the implementing regulations taken as a whole leave no doubt that Congress intended for Immigration Judges to have jurisdiction to grant bond to such individuals when placed in removal proceedings under 8 U.S.C. § 1229a. Said different, simply being an applicant for admission has never been understood to subject someone to mandatory detention. Indeed, the most trusted of immigration law treatises, *Kurzban’s*, states

Although a person who enters EWI is considered an applicant for admission under INA § 235(a)(1) and inadmissible under INA § 212(a)(6)(A)(i), because they are not apprehended at the border, they do not fall within the definition of “arriving aliens” under 8 CER. §§ 1.2, 1001.1 {q}. Therefore, an IJ is not precluded from conducting a bond hearing. *See* Kurzban, Chapter 3, Admission and Removal, M-3, p. 235 (2018-19) 16th Ed.

29. As explained in leading immigration law treatises, although noncitizens who entered without inspection are applicants for admission, they are not “arriving aliens” unless apprehended at the border or a port of entry. Because they do not meet the regulatory

definition of “arriving alien,” Immigration Judges are not barred from exercising bond jurisdiction. *See* Kurzban, *Immigration Law Sourcebook*, ch. 3 (16th ed. 2018-19); *see also* 8 C.F.R. §§ 1.2, 1001.1(q), 1003.19(h)(2)(i)(B).

30. The regulations expressly strip Immigration Judges of bond jurisdiction only over the discrete subset of “arriving aliens,” even though all arriving aliens are applicants for admission. *See* 8 C.F.R. § 1003.19(h)(2)(i)(B). This careful distinction confirms that Congress and the agencies did not intend mandatory detention to apply to all applicants for admission.

III. *Matter of O. Li, Matter of Yajure Hurtado and the New ICE Policy*

31. *Matter of O. Li* concerned a noncitizen apprehended at or near the border shortly after entry and placed in expedited removal proceedings pursuant to INA § 235(b)(1). 29 I. & N. Dec. 67, 67-68 (BIA 2025). The Board’s analysis was expressly confined to the detention authority governing recent entrants subject to expedited removal and did not purport to alter or expand the statutory detention framework applicable to noncitizens apprehended in the interior of the United States long after entry, who are placed in removal proceedings under INA § 240.
32. On July 8, 2025, ICE, “in coordination with” the Department of Justice, issued an internal memorandum entitled *Interim Guidance Regarding Detention Authority for Applicants for Admission*, announcing a reversal of its longstanding interpretation of the detention statutes. *See* AILA ICE Memo Interim Guidance Regarding Detention Authority.
33. Under this new guidance, ICE asserts that all individuals who entered the United States without inspection are now subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A), regardless of when or where they are apprehended, including individuals who have lived in the United States for years or decades.

34. On September 5, 2025, the Board of Immigration Appeals issued their decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), which enshrined ICE's new policy position into caselaw binding on all IJ's an applicable to all bond requests made by noncitizens present in the United States without admission or parole.

IV. Habeas Corpus

35. A petitioner is entitled to habeas corpus relief where he demonstrates that his detention violates the United States Constitution, federal law, or treaties of the United States. *See* 28 U.S.C. § 2241(c)(3); *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973) (“The essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and . . . the traditional function of the writ is to secure release from illegal custody.”).

36. The writ of habeas corpus is “available to every individual detained within the United States,” including noncitizens in immigration custody. *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004) (citing U.S. Const. art. I, § 9, cl. 2).

V. Due Process

37. The Due Process Clause of the Fifth Amendment guarantees that no person within the United States shall be deprived of liberty without due process of law. *See* U.S. Const. amend. These substantive and procedural due process protections apply to all persons within the United States, including noncitizens, regardless of immigration status. *See Trump v. J.G.G.*, 604 U.S. ___, 145 S. Ct. 1003, 1006 (2025) (per curiam) (“It is well established that the Fifth Amendment entitles aliens to due process of law” in the context of removal proceedings (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993))).

38. The Due Process Clause affords heightened protection against government interference with fundamental liberty interests, and freedom from physical detention lies at the core of

those protections. Even for individuals present in the United States without lawful status, courts have recognized that noncitizens who have established substantial ties and a settled life within the country possess a significant liberty interest in freedom from prolonged detention. *See, e.g., Sanchez Álvarez v. Noem*, No. 25-cv-1090, 2025 WL 2942648, at *1, 7 (W.D. Mich. Oct. 17, 2025); *Chogllo Chafra v. Scott*, Nos. 25-cv-437, 438, 439, 2025 WL 2688541, at *1, 10 (D. Me. Sept. 22, 2025).

STATEMENT OF FACTS

- 39.** Petitioner Jose Perez Luna is a thirty-one-year-old native and citizen of Venezuela. He has been physically present in the United States for approximately four years and two months.
- 40.** Petitioner entered the United States without inspection, admission, or parole on or about November 7, 2021. *See* Form I-213.
- 41.** Upon entry, Petitioner was apprehended by immigration authorities and detained. On November 8, 2021, the Department of Homeland Security (“DHS”) issued a Notice to Appear (“NTA”), charging Petitioner as removable under section 212(a)(6)(A)(i) of the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1182(a)(6)(A)(i), and placing him into removal proceedings pursuant to INA § 240. *Id.*
- 42.** DHS subsequently released Petitioner on his own recognizance. *See* Notice to EOIR: Alien Address (“Form I-830”).
- 43.** Since his release, Petitioner has remained continuously present in the United States and currently resides in Providence Village, Texas with his family.
- 44.** During this period, Petitioner has been a productive and law-abiding member of the community and has had no adverse interactions with law enforcement.

PETITIONER'S DETENTION

45. On December 4, 2025, Petitioner was arrested by Immigration and Customs Enforcement (“ICE”) Enforcement and Removal Operations (“ERO”) officers and taken into immigration custody.
46. Following his arrest, DHS detained Petitioner pursuant to INA § 236, codified at 8 U.S.C. § 1226. Petitioner has remained in DHS custody since that date and is currently detained at the Bluebonnet Detention Facility in Anson, Texas.
47. Although Petitioner is charged as inadmissible based on his manner of entry, he is detained under INA § 236 and is presently pursuing relief from removal in his ongoing immigration proceedings.
48. Noncitizens detained pursuant to INA § 236 are ordinarily entitled to an individualized custody determination, including the opportunity for a bond hearing before an Immigration Judge (“IJ”). *See* 8 U.S.C. § 1226(a). DHS has nevertheless denied Petitioner release on bond, asserting that he is subject to mandatory detention.
- I. **The Statutory and Regulatory Framework of the Entire Act Demonstrates it Distinguishes Between Arriving Aliens/Applicants for Admission and Other Noncitizens Subject to Removal.**
49. The Government’s position rests on an overbroad reading of 8 U.S.C. § 1225(a)(1), which defines certain noncitizens as “applicants for admission.” From that definition alone, the Government contends that all such individuals are subject to mandatory detention under § 1225(b). This interpretation disregards the INA’s structure, its implementing regulations, and decades of consistent agency and judicial practice distinguishing between arriving aliens and noncitizens apprehended within the interior of the United States.
50. In enforcing the immigration laws, DHS components may rely on several distinct statutory sources of authority to arrest and detain noncitizens, including INA §§ 235, 236, and 287.

codified at 8 U.S.C. §§ 1225, 1226, and 1357. Each provision governs different factual circumstances, and the applicable detention authority depends on where, when, and how the noncitizen is encountered.

A. INA § 235, 8 U.S.C § 1225: Inspection, Arrest, and Detention of Aliens at the Ports of Entry and Near the Border

51. Under INA § 235, titled “Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearings,” governs the inspection, arrest, and detention of noncitizens seeking admission to the United States, most commonly at ports of entry or near the border. *See* 8 U.S.C. § 1225.
52. One distinguishing feature of § 235 is the absence of a warrant requirement, which reflects its application in border and border-proximate contexts. *See* INA § 236, 8 U.S.C. § 1226 (authorizing arrest pursuant to a warrant). This distinction aligns with longstanding Fourth Amendment doctrine recognizing a border exception to the warrant requirement. *See United States v. Flores-Montano*, 541 U.S. 149, 153 (2004); *United States v. Cotterman*, 637 F.3d 1068, 1076 (9th Cir. 2011).
53. The absence of a warrant requirement in INA § 235, 8 U.S.C § 1225, is in line with the longstanding principle that the search and seizure of persons at our country’s borders is not subject to the Fourth Amendment’s warrant requirement. *See United States v. Flores-Montano*, 541 U.S. 149, 153 (2004) (“Congress, since the beginning of our Government, has granted the Executive Plenary authority to conduct routine searches and seizures at the border, without probable cause or a warrant . . .”) (internal citations omitted); *United States v. Cotterman*, 637 F.3d 1068, 1076 (9th Cir. 2011) (“[T]here is [no] room for disagreement over the compelling underpinnings of the doctrine” exempting border searches and seizures from the Fourth Amendment’s warrant requirement. “It is well established that the

sovereign need not make any special showing to justify its search of persons and property at the international border.”).

54. In cases where a federal warrant has not been issued and the border exception to the warrant requirement is inapplicable, INA § 287, 8 U.S.C. § 1357, grants CBP and ICE-ERO authority to arrest and briefly detain aliens in limited circumstances. See *Arizona v. United States*, 132 S. Ct. 2492, 2506 (2012) (discussing the authority granted to CBP and ICE-ERO by INA § 287, 8 U.S.C. § 1357, to arrest aliens in some circumstances where a federal warrant has not been issued). For example, “[t]hey may arrest an alien for being ‘in the United States in violation of any [immigration] law or regulation’ . . . where the alien ‘is likely to escape before a warrant can be obtained’” *Id.* (second alteration in original) (quoting INA § 287, 8 U.S.C. § 1357). From this Statute, one can see that the arrest without a warrant authority set forth in 8 U.S.C. § 1225 was intended to be limited geographically to near the border and intended only to apply to noncitizens potentially subject to expedited removal under 8 U.S.C. § 1225. Indeed, this is illustrated by the first two paragraphs of 8 U.S.C. §1357(a), titled “Powers without warrant” which expressly provide:

Any officer or employee of the Service authorized under regulations prescribed by the Attorney General shall have power without warrant

- (1) to interrogate any alien or person believed to be an alien as to his right to be or to remain in the United States;
- (2) to arrest any alien who in his presence or view is entering or attempting to enter the United States in violation of any law or regulation made in pursuance of law regulating the admission, exclusion, expulsion, or removal of aliens, or to arrest any alien in the United States, if he has reason to believe that the alien so arrested is in the United States in violation of any such law or regulation and is likely to escape before a warrant can be obtained for his arrest, but the alien arrested shall be taken without unnecessary delay for examination before an officer of the Service having authority to examine aliens as to their right to enter or remain in the United States;

See 8 U.S.C. § 1357(a)(1)-(2)(emphasis added).

- 55.** By explicitly proscribing as an exception to the warrant requirement noncitizens who the officer sees entering or attempting to enter the United States, the statute implicitly proscribes that arrests made elsewhere that do not fall under one of the proscribed warrant exceptions require a warrant. Due to the fact that it is most often relied on at a designated port of entry or near the border, INA § 235, 8 U.S.C § 1225, is the statute primarily relied on by CBP. *See* n. 3 *supra*, for the authority to arrest and detain an alien. Though there are times in which ICE also relies on INA § 235, 8 U.S.C § 1225, for the authority to arrest and detain an alien, ICE typically relies on the authority granted by INA § 236, 8 U.S.C § 1226.
- 56.** Unlike CBP, the majority of aliens ICE arrests are encountered in a setting that is not near a border. As a result, an arrest warrant issued pursuant to the authority granted by INA § 236(a), 8 U.S.C § 1226(a) is issued in the context of ICE arresting aliens for removal proceedings. Pursuant to § C.F.R. § 236.1(b), the authority to issue an arrest warrant has been properly delegated by the Attorney General to the list of persons found in 8 C.F.R. § 287.5(e)(2).
- 57.** In addition to providing the authority under which a warrant for the arrest of an alien may be issued, INA § 236(a), 8 U.S.C § 1226(a), provides ICE-ERO with the authority to arrest an alien for which an arrest warrant has been issued “pending a decision on whether the alien is to be removed from the United States.” *See* INA § 236, 8 U.S.C. § 1226. Pursuant to 8 C.F.R. § 236.1(b), the authority to serve an arrest warrant and arrest an alien has been properly delegated by the Attorney General to the list of persons found in 8 C.F.R. § 287.5(e)(3).
- 58.** Once placed in removal proceedings under 8 U.S.C. § 1229a, noncitizens who are not subject to mandatory detention under 8 U.S.C. § 1226(c) or to 8 C.F.R § 1003.190) (2) may

request a bond from an Immigration Judge. One need not look any further than 8 C.F.R. § 1003.19(h)(2) (iii)(B) to see that the statutory and regulatory scheme was always intended to give Immigration Judges jurisdiction to grant bond to most noncitizens falling under the definition of “applicant for admission.” This is demonstrated by the fact that the regulations governing an Immigration Judge’s bond jurisdiction explicitly strip the Judge of authority over “arriving aliens” which are a subset of noncitizens who fall under the definition of “applicants for admission.” *See* 8 C.F.R. § 1003.19(h)(2)(i)(B).

59. Specifically, 8 C.F.R. § 1.2 defines an arriving alien as:

Arriving alien means an applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry, or an alien interdicted in international or United States waters and brought into the United States by any means, whether or not to a designated port-of-entry, and regardless of the means of transport. An arriving alien remains an arriving alien even if paroled pursuant to section 212(d)(5) of the Act, and even after any such parole is terminated or revoked. However, an arriving alien who was paroled into the United States before April 1, 1997, or who was paroled into the United States on or after April 1, 1997, pursuant to a grant of advance parole which the alien applied for and obtained in the United States prior to the alien's departure from and return to the United States, will not be treated, solely by reason of that grant of parole, as an arriving alien under section 235(b)(1)(A)(i) of the Act.

See 8C.F.R. § 1.2 (emphasis added),

60. If, as the government now contends, every noncitizen classified as an “applicant for admission” is subject to mandatory detention for bond purposes, there would have been no need for a regulation specifically stating that Immigration Judges lack jurisdiction to grant bond to “arriving aliens.” The regulation’s explicit prohibition against bond for “arriving aliens” implicitly confirms that Immigration Judges retain jurisdiction over other categories of “applicants for admission,” including individuals like Petitioner, who was apprehended after entry but later released on his own recognizance and then re-detained after years of presence and well within the interior of the United States. Petitioner is not an “arriving

alien” and is not subject to mandatory detention under INA § 235. Rather, he is a noncitizen arrested within the United States and detained under INA § 236.

B. The Recent Enactment of the Laken Riley Act Forecloses the IJ’s Interpretation and Would Be Rendered Superfluous.

61. The most compelling evidence against the government’s position is the recent amendment to the INA’s primary mandatory detention statute, § 236(c). In January 2025, Congress enacted the Laken Riley Act, which added a new subparagraph to the mandatory detention provisions. The amended statute now provides:

(c) Detention of criminal aliens (1) Custody The Attorney General shall take into custody any alien who- ... (E)(i) is inadmissible under paragraph (6)(A), (6)(C), or (7) of section 1182(a) of this title; and (ii) is charged with, is arrested for, is convicted of, admits having committed, or admits committing acts which constitute the essential elements of any burglary, theft, larceny, shoplifting, or assault of a law enforcement officer offense...

See INA § 236(c)(1)(E) (emphasis added).

62. The structure of this amendment is dispositive. By using the conjunctive “and,” Congress mandated a two-part test. Mandatory detention under this new provision applies only to a noncitizen who meets both the status requirement of subclause (i) (inadmissibility for EWI, fraud, or lack of documents) and the conduct requirement of subclause (ii) (a criminal charge, arrest, or conviction for a specified offense).

63. Under the government’s theory, every noncitizen described in subclause (i) would be subject to mandatory detention regardless of conduct. If that were correct, the Laken Riley Act would be rendered meaningless. It is a foundational principle of statutory construction that courts must “give effect, if possible, to every clause and word of a statute” and must avoid interpretations that render statutory language superfluous. *See Duncan v. Walker*, 533 U.S. 167, 174 (2001); *see also Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 385 (2013).

64. The government's position violates this canon by effectively nullifying an entire act of Congress. The only logical conclusion is that Congress enacted § 236(c)(1)(E) precisely because inadmissibility under § 212(a)(6)(A)(i) alone does not trigger mandatory detention.
65. This conclusion is further reinforced by the principle of *expressio unius est exclusio alterius*. Within § 235 itself, Congress explicitly mandated detention in limited circumstances, such as for certain individuals subject to expedited removal who fail to establish a credible fear. See INA § 235(b)(1)(B)(iii)(IV). Congress's decision not to impose comparable mandatory detention for all applicants for admission confirms that it did not intend blanket mandatory detention under § 235(b)(2).

II. Reliance on *Matter of Q. Li* is Misplaced.

66. The authorities relied upon by the Immigration Judge, *Matter of Q. Li*, 29 I. & N. Dec. 66 (BIA 2023), do not support the Government's sweeping contention that all noncitizens who entered without inspection are subject to mandatory detention. Each of those decisions addressed materially different statutory provisions and factual circumstances, involving noncitizens who were either concededly subject to mandatory detention or were detained as arriving aliens under the expedited removal framework of INA § 235(b)(1).
67. In *Matter of Q. Li*, the respondent was a noncitizen who had been apprehended at or near the border shortly after entry and placed into expedited removal proceedings under INA § 235(b)(1). See *Matter of Q. Li*, at 67-68. The Board's analysis focused on the detention authority applicable to that narrow category of recent border arrivals and did not purport to redefine the detention framework applicable to noncitizens apprehended years after entry in the interior of the United States.
68. Critically, none of these decisions held, or even suggested that a noncitizen's inadmissibility under INA § 212(a)(6)(A)(i), standing alone, divests an Immigration Judge

of bond jurisdiction or subjects the individual to mandatory detention regardless of where, when, or how the noncitizen was apprehended.

69. Petitioner's circumstances are factually and legally distinct. Petitioner was encountered at the border but was released shortly after entry. He was then apprehended years after entering the United States and hundreds of miles from the border, was arrested pursuant to INA § 236, and was placed into standard removal proceedings under 8 U.S.C. § 1229a. Petitioner was never placed in expedited removal proceedings under INA § 235(b)(1).

70. Accordingly, *Matter of Q. Li* addresses the scope of detention authority under § 235(b) for the limited class of arriving or recently arrived noncitizens to whom that provision was designed to apply. They do not support the Government's novel assertion that long-present noncitizens charged under § 212(a)(6)(A)(i) are categorically subject to mandatory detention or that Immigration Judges lack bond jurisdiction under § 1226(a).

III. **Even If *Matter of Q. Li* Altered the Scope of Mandatory Detention to Encompass Noncitizens Charged Under INA § 212(a)(6)(A), Any Such Interpretation Constitutes a New Rule That Cannot Be Applied Retroactively Under Longstanding Supreme Court Precedent**

71. The United States Constitution's Ex Post Facto Clause and the strong presumption against retroactive application of new laws and legal interpretations reflect a foundational principle of American jurisprudence. This principle is rooted in concerns for "fair notice, reasonable reliance, and settled expectations." See *Vartelas v. Holder*, 566 U.S. 257, 266 (2012) (quoting *INS v. St. Cyr*, 533 U.S. 289, 323 (2001)). In the immigration context where detention and removal carry severe consequences, the Supreme Court has been especially vigilant in guarding against retroactive application of rules that alter the legal consequences of past conduct.

72. In *INS v. St. Cyr*, the Supreme Court held that Congress's repeal of discretionary relief from removal could not be applied retroactively to noncitizens who pleaded guilty to criminal

offenses at a time when such relief remained available. *See INS v. St. Cyr* 533 U.S. 289, 325 (2001). The Court emphasized that “elementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly.” *Id.* at 321.

73. Similarly, in *Vartelas v. Holder*, the Court held that an amendment to the INA expanding the definition of who is “seeking admission” thereby subjecting certain lawful permanent residents to new grounds of inadmissibility, could not be applied to a conviction that predated the statutory change. *See Vartelas v. Holder* 566 U.S. 257, 272 (2012). The Court explained that retroactive application would improperly “attach a new disability, in respect to transactions or considerations already past.” *Id.* at 266 (internal quotation marks omitted).

74. The prohibition on retroactivity applies not only to statutory amendments but also to new administrative or judicial interpretations that mark a sharp departure from prior law. The Fifth Circuit addressed this principle in *Monteon-Camargo v. Barr*, 918 F.3d 423 (5th Cir. 2019), which considered whether the Board of Immigration Appeals’ decision in *Matter of Diaz-Lizarraga*, 26 I. & N. Dec. 847 (BIA 2016), could be applied retroactively. Because *Diaz-Lizarraga* substantially expanded the definition of a crime involving moral turpitude, the Fifth Circuit held that retroactive application would impermissibly disrupt settled expectations and impose new immigration consequences for past conduct. *Monteon-Camargo*, 918 F.3d at 430-31. Applying a balancing test, the court concluded that the “ills of retroactivity” outweighed any benefit of retroactive enforcement. *Id.* (quoting *Microcomputer Tech. Inst. v. Riley*, 139 F.3d 1044, 1050 (5th Cir. 1998)).

75. This line of authority establishes a clear rule: when a new statutory interpretation or administrative decision imposes new and adverse immigration consequences for past conduct, it may not be applied retroactively absent clear congressional intent.
76. Even assuming *arguendo* that *Matter of Q. Li* announced a new interpretation holding that all noncitizens inadmissible under INA § 212(a)(6)(A)(i) are categorically subject to mandatory detention, such an interpretation would constitute a new rule that cannot be applied retroactively to Petitioner.
77. For decades prior to *Q. Li*, noncitizens who entered without inspection and were later apprehended in the interior of the United States were routinely detained under INA § 236(a) and afforded individualized bond hearings. A sudden reinterpretation subjecting all such individuals to mandatory detention would impose a new and severe legal consequence prolonged, potentially indefinite detention, based solely on past conduct that occurred when no such consequence attached.
78. As in *Diaz-Lizarraga*, where a new interpretation expanded the immigration consequences of prior criminal conduct, retroactive application of a rule subjecting all noncitizens inadmissible under § 212(a)(6)(A)(i) to mandatory detention would upset settled expectations and impose a significant new disability. Mandatory detention is a substantial deprivation of liberty, not a mere procedural change.
79. Petitioner entered the United States about two years before *Matter of Q. Li* was decided, at a time when neither the statute, the regulations, nor binding precedent suggested that entry without inspection alone would result in mandatory detention without bond. Applying such a newly announced rule to Petitioner would therefore violate the longstanding presumption against retroactivity.

80. Accordingly, even if *Matter of Q. Li* were construed to announce a new rule expanding mandatory detention to all noncitizens inadmissible under INA § 212(a)(6)(A)(i), that rule cannot lawfully be applied to Petitioner's past conduct.

IV. Application of *Matter of Yajure Hurtado* Would be Legally Erroneous

81. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), addressed issues consistent with the Department of Homeland Security's recent policy guidance and has been cited by DHS in support of its detention practices.

82. The statutory language, history, and overall structure clearly show that Petitioner's detention is governed by § 1226 and he is entitled to a bond hearing. ICE's new policy is due no deference from this Court, and neither is the *Matter of Hurtado* decision. *Loper Bright Enters. v. Raimando*, 603 U.S. 369, 385 (2024) ("When the meaning of a statute [is] at issue, the judicial role [is] to interpret the act of Congress, in order to ascertain the rights of the parties.") (internal quotation marks and citation omitted).

83. In examining the very issue presented by Petitioner, courts across the country have near unanimously held that Petitioner's reading of the law is correct. *See, e.g., Buenrostro-Mendez v. Bondi*, No. CV H-25-3726, 2025 WL 2886346, at *3 (S.D. Tex. Oct. 7, 2025); *Lopez Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025).

84. This Court should similarly find that Petitioner is detained under 8 U.S.C. § 1226(a) and entitled to a bond hearing. Alternatively, should this Court disagree with Petitioner's statutory arguments, he should still be entitled to relief as a matter of due process.

85. To determine whether a civil detention violates a detainee's due process rights, courts apply the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976)." *Martinez v. Noem*, No. 5:25-cv-1007-JKP, 2025 WL 2598379, at *2 (W.D. Tex. Sept. 8, 2025). Those

factors are: (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.” *Mathews*, 424 U.S. at 335.

86. As to the first *Mathews* factor, Petitioner’s private interest, “[t]he interest in being free from physical detention’ is ‘the most elemental of liberty interests.’” *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). That “paramount liberty interest” is secured not just by statute but by the Constitution. *Hamdi*, 542 U.S. at 529. Noncitizens within the United States as opposed to those on the threshold of entry have additional rights and privileges. *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958)). Petitioner has resided in the United States for over four years with family. Has a history of lawful employment, and no criminal record. The first factor weighs in his favor.

87. The second factor likewise weighs in favor of Petitioner. Continuing to detain him without holding a bond hearing creates a substantial risk that Petitioner will be erroneously deprived of his liberty. A bond hearing is the precise manner to ameliorate that risk. Indeed, agency decisionmakers regularly “conduct individualized custody determinations . . . consider[ing] flight risk and dangerousness.” *Velesaca v. Decker*, 458 F. Supp. 3d 224, 242 (S.D.N.Y. 2020) (citation omitted); *see also* 8 C.F.R. §§ 236.1(c)(8), 1003.19(h)(3). That is exactly the type of proceeding that would give Petitioner an opportunity to be heard and to receive a meaningful assessment of his dangerousness or likelihood of absconding while also greatly reducing the risk of an erroneous deprivation of his liberty.

88. The government interest here does not weigh against Petitioner as the government has no valid interest in depriving Petitioner of a bond hearing. The government’s interest is

supposed to be in upholding the Constitution and laws, both of which are plainly violated by its recent actions and continued unlawful detention of Petitioner. Depriving anyone of their liberty is a serious thing that should only be done as punishment or when necessary to prevent flight or danger to the community.

89. To balance liberty interests against the government interests in assuring appearance and safety, the INA explicitly provides bond hearings for noncitizens who are not described in § 1226(c) or 8 C.F.R. § 1003.19(h). The government interest in detaining everyone they encounter is not sufficient to counter the private interests affected and the risk of erroneous deprivation under the current procedures.
90. Thus, Petitioner's arbitrary detention without a bond hearing by a neutral adjudicator violates Petitioner's due process rights as guaranteed by the Fifth Amendment.

V. **ICE's New Policy Has Been Held Unlawful by the Ninth Circuit**

91. On November 25, 2025, the United States District Court for the Central District of California held that DHS's policy applying INA § 235(b)(2) to noncitizens in Petitioner's circumstances violates both the INA and the Due Process Clause. *See Lazaro Maldonado-Bautista et al. v. Ernesto Santacruz Jr.*, No. 5:25-cv-0187 (C.D. Cal. 2025). In *Bautista*, the Court certified a bond eligible class and granted partial summary judgment, expressly rejecting both *Matter of Yajure Hurtado* and DHS's prior policy imposing mandatory detention under INA § 235(b)(2)(A) on all individuals who entered the United States without inspection. The declaratory relief applies to all members of the "Bond Eligible Class." *See Bautista et al.* at 14.
92. The Bond Eligible Class includes all noncitizens in the United States without lawful status who: (1) 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 DHS makes an initial custody determination.

- 93.** Under this definition, two categories of individuals are eligible for relief: (1) Those who entered the United States, were not apprehended at or near the border or close in time to entry, and were later arrested by immigration authorities; and (2) those who were apprehended at or near the border shortly after entry, were released on their own recognizance, and subsequently re-detained after residing in the United States. Petitioner clearly falls within the Bond Eligible Class. He entered without inspection, was initially released on his own recognizance, and has resided continuously in the interior for over two years prior to his most recent detention.
- 94.** Longstanding BIA precedent provides that a noncitizen is eligible for release on bond unless the government demonstrates that the individual poses a danger to persons or property, presents a threat to national security, or is a flight risk. *See Matter of Patel*, 15 I&N Dec. 666 (BIA 1976); *see also Matter of Daryoush*, 18 I&N Dec. 352 (BIA 1982). Pursuant to 8 C.F.R. § 236.1(c)(8), Petitioner bears the burden of showing he is not a danger and is likely to appear for all future proceedings, a burden he satisfies given his continuous compliance with DHS directives, his lack of criminal record and his substantial community and family ties.
- 95.** Petitioner satisfies all criteria for inclusion in the Bond Eligible Class certified in *Maldonado-Bautista*. He falls within the second category of class members: individuals who apprehended at or near the border shortly after entry, were released on their own recognizance, and subsequently re-detained after residing in the United States. Additionally, Petitioner is not subject to detention under 8 U.S.C. §§ 1226(c), 1225(b)(1), or 1231.
- 96.** Accordingly, under *Bautista*, Petitioner is recognized as a class member not subject to mandatory detention under INA § 235(b)(2), and the Immigration Judge retains jurisdiction to conduct an

individualized bond hearing. Petitioner also has a meritorious basis for bond, He poses no danger to persons or property and is not a flight risk.

97. The final judgment in *Maldonado-Bautista v. Santacruz* confirms that Bond Eligible Class members are detained under 8 U.S.C. § 1226(a) (INA § 236(a)) and are not subject to mandatory detention under 8 U.S.C. § 1225(b)(2) (INA § 235(b)). See *Maldonado-Bautista et al. v. Santacruz et al.*, 5:25-cv-01873-SSS-BFM, at *2 (C.D. Cal. Dec. 18, 2025). The Court further held that, pursuant to Defendants' regulations, 8 C.F.R. §§ 236.1, 1236.1, and 1003.19, Bond Eligible Class members are entitled to consideration for release on bond by immigration officers, and if not released, a custody redetermination hearing before an Immigration Judge.
98. Because Petitioner meets all of these criteria, he is entitled to a bond hearing and redetermination of his custody under INA § 236(a).
99. Finally, the United States District Court for the Central District of California vacated this DHS policy in the final judgment of *Maldonado-Bautista v. Santacruz*, holding it unlawful under the Administrative Procedure Act, 5 U.S.C. § 706(2)(A). See *Maldonado-Bautista v. Santacruz*, at *2 (C.D. Cal. Dec. 18, 2025).
100. Accordingly, Petitioner may not be detained without an individualized bond and custody determination pursuant to an unlawful policy that erroneously asserts that the Immigration Court lacks jurisdiction to conduct such a determination.

VI. Petitioner Has Not Received a Proper Bond Hearing Required by Statute and Remains in ICE Custody.

101. Petitioner has requested a bond redetermination hearing before an Immigration Judge pursuant to 8 U.S.C. § 1226(a) and 8 C.F.R. § 1003.19.
102. The IJ at the El Paso Immigration Court has denied individuals like Petitioner the right to an individualized bond and custody determination, concluding that the court lacks jurisdiction to grant bond or conduct a bond redetermination hearing on the ground that

such individuals are deemed “applicants for admission” subject to mandatory detention pursuant to *Matter of Q. Li* and 8 U.S.C. § 1225(b)(2)(A).

103. Petitioner has been detained for about two months and, absent judicial intervention, faces continued detention for the duration of his removal proceedings potentially for many additional months despite being otherwise eligible for release on bond under the INA.

104. Despite this settled statutory and regulatory framework, the IJ at the El Paso Immigration Court accepted ICE’s novel interpretation and concluded that individuals similarly situated to Petitioner are subject to mandatory detention solely on the basis of having entered the United States without inspection. As a result of the IJ’s refusal to exercise bond jurisdiction under 8 U.S.C. § 1226(a), Petitioner has been denied the individualized custody determination required by statute and regulation and remains in ICE custody. *See* 8 U.S.C. § 1226(a); 8 C.F.R. § 1003.19.

105. Absent relief from this Court, Petitioner faces the prospect of months or potentially years of continued civil immigration detention while his removal proceedings remain pending, resulting in prolonged separation from his family and community.

106. Petitioner’s prolonged detention has caused, and continues to cause, severe and ongoing harm, including separation from his family, loss of income and the ability to provide financial support to his household, and substantial interference with his ability to meaningfully defend against removal. This interference includes restricted communication with potential witnesses, limited access to documentary and testimonial evidence, and significant impediments to securing and consulting with legal counsel.

107. Because Petitioner’s removal proceedings remain pending and no final order of removal has been entered, there is no reasonable likelihood that Petitioner’s removal will occur in the reasonably foreseeable future.

108. Administrative exhaustion is futile and inadequate to remedy the ongoing unlawful detention. Although Petitioner is within the statutory period to appeal to the Immigration Judge's decision to the Board of Immigration Appeals ("BIA") in the case of denial and will do so to preserve his rights, such an appeal will take months and cannot provide timely relief. DHS's challenged detention position was issued "in coordination with" the Department of Justice, which oversees both the immigration courts and the BIA. Recent unpublished BIA decisions have already adopted DHS's position that individuals like Petitioner are subject to mandatory detention as applicants for admission.

109. Moreover, in parallel federal litigation challenging the same detention policy where EOIR and the Attorney General are respondents, the Department of Justice has expressly defended the position that long-present noncitizens who entered without inspection are "applicants for admission" subject to detention under 8 U.S.C. § 1225(b)(2)(A). *See* Mot. to Dismiss at 27-31, *Rodriguez Vazquez v. Bostock*, No. 3:25-cv-05240-TMC (W.D. Wash. June 6, 2025), Dkt. 49 at 27-31.

VII. The Administrative Procedure Act Independently Requires the Court to Set Aside the Respondents' Categorical No-Bond Detention Posture

110. The Administrative Procedure Act ("APA") provides that a reviewing court shall "hold unlawful and set aside" agency action that is "not in accordance with law" or "in excess of statutory jurisdiction, authority, or limitations." *See* 5 U.S.C. § 706(2)(A), (C). The APA also authorizes relief where an agency has "unlawfully withheld or unreasonably delayed" action that the law requires. *See* 5 U.S.C. § 706(1). Here, Respondents' continued detention of Petitioner under a categorical INA § 235(b) no-bond theory, despite the statutory framework and persuasive authority, including *Maldonado Bautista*, is unlawful and exceeds statutory authority. As applied,

Respondents have also unlawfully withheld the individualized custody process required under INA § 236(a).

111. Sovereign immunity is waived for non-monetary relief under 5 U.S.C. § 702, and the Court may provide declaratory and injunctive relief to compel a lawful custody determination. Accordingly, even apart from habeas, Petitioner is entitled to an order setting aside Respondents' no-bond determination and requiring prompt individualized custody consideration consistent with INA § 236(a).

VIII. Due Process Requires a Meaningful and Individualized Custody Determination by a Neutral Decision-Maker

112. Civil immigration detention implicates a core liberty interest. The Due Process Clause prohibits arbitrary civil detention and requires procedures adequate to ensure that the government's asserted justification for confinement outweighs the individual's interest in liberty. See, e.g., *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). When Respondents categorically foreclose any bond process, Petitioner is deprived of the only mechanism to test whether continued detention is necessary. At minimum, due process requires an individualized custody determination that considers flight risk, danger, and reasonable conditions of release, and it cannot be replaced by an unreviewable, categorical no-bond policy.

IX. Irreparable Harm

113. Continued unlawful detention constitutes irreparable harm as a matter of law. Courts consistently recognize that the deprivation of liberty in violation of the Constitution and governing statutes “unquestionably constitutes irreparable injury.” *Phan v. Bradford*, 2025 WL 1993735, at *5 (E.D. Tex. 2025) (quoting *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012), which in turn quotes *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). The Supreme Court has long held that “freedom from imprisonment...lies at the heart of the

liberty protected by the Due Process Clause.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

Where, as here, the alleged harm is the ongoing deprivation of a constitutional right, no further showing of irreparable injury is necessary. *Phan*, 2025 WL 1993735, at *5 (citing *Warsoldier v. Woodford*, 418 F.3d 989, 1001-02 (9th Cir. 2005)).

- 114.** Each day Petitioner remains detained in ICE custody in direct contravention of the INA and the Constitution; he suffers concrete and irreparable harm. This harm includes the complete loss of physical liberty, the severe emotional and psychological toll of prolonged detention, the inability to work or provide financial support to his family, and the impairment of his ability to meaningfully participate in and assist with his removal defense.
- 115.** Prolonged detention in ICE custody also presents serious risks to Petitioner’s health and safety. Recent deaths in immigration detention demonstrate that these risks are neither speculative nor remote. For example, Mr. Phan, a 55-year-old man from Vietnam, died in ICE custody earlier this year after being re-detained despite having been subject to a removal order for more than a decade. *See Phan*, 2025 WL 1993735.
- 116.** These concerns are further corroborated by congressional testimony and official reporting. On May 14, 2025, ICE Acting Director Todd Lyons testified before the House Appropriations Committee that nine individuals had died in ICE custody since January 20, 2025. *See Testimony of Todd Lyons, House Appropriations Committee (May 14, 2025)*.
- 117.** Approximately one month later, on June 23, 2025, ICE publicly reported the death of a 49-year-old Canadian national while in ICE custody. *See ICE Press Release, June 23, 2025*. Reports of overcrowding, prolonged detention in facilities not designed for long-term confinement, and other systemic deficiencies further exacerbate the risk of irreparable harm to detainees such as Petitioner.

118. By contrast, Respondents will suffer no harm if Petitioner is released from custody or, at a minimum, provided the individualized bond hearing to which he is statutorily entitled. The balance of equities thus weighs decisively in Petitioner's favor.

119. Finally, administrative remedies cannot prevent the ongoing irreparable harm. Although Petitioner is pursuing an appeal to the Board of Immigration Appeals to preserve his rights, that process will take months and cannot remedy the immediate deprivation of liberty. Moreover, DHS's detention policy was issued "in coordination with" the Department of Justice, which oversees both the immigration courts and the BIA. In related federal litigation, DOJ has expressly defended the position that individuals like Petitioner are subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). *See* Mot. to Dismiss at 27-31, *Rodriguez Vazquez v. Bostock*, No. 3:25-cv-05240-TMC (W.D. Wash. June 6, 2025), Dkt. 49.

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

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

120. Petitioner realleges and incorporates by reference all preceding paragraphs as though fully set forth herein.

121. Petitioner is currently detained by the federal government without an individualized custody determination and without a meaningful opportunity to seek release, in violation of the Due Process Clause of the Fifth Amendment to the United States Constitution.

122. Under the Due Process Clause, civil immigration detention is constitutional only insofar as it bears a reasonable relation to its legitimate purposes, namely, ensuring the noncitizen's appearance at removal proceedings and protecting the community from

danger. *Id.* Detention that is not reasonably related to these purposes, or that is imposed without adequate procedural safeguards, violates due process.

123. The government's detention of Petitioner is unjustified. Respondents have made no individualized determination that Petitioner poses a flight risk or a danger to the community. To the contrary, Petitioner has substantial ties to the community, lacks disqualifying criminal history, and is a suitable candidate for release on bond or conditions of supervision. His continued detention therefore does not further the legitimate purposes of civil immigration detention. *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.

124. By adopting the government's expansive reading of § 1225 and *Matter of Q. Li*, DHS effectively stripped Immigration Judges of bond jurisdiction over a broad class of long-present noncitizens, notwithstanding decades of contrary practice and regulation. That interpretation deprives Petitioner of the procedural protections guaranteed by the Due Process Clause.

125. Petitioner's detention rests on the government's assertion that he is categorically subject to mandatory detention under INA § 235(b)(2)(A) solely because he is inadmissible under INA § 212(a)(6)(A)(i), based on the BIA's decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). This Court is not required to defer to *Yajure Hurtado*, as the Supreme Court has emphasized that "[c]ourts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority" and may not defer to an agency's interpretation of law merely because a statute is ambiguous. *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 412 (2024).

126. Applying that independent judgment, the Supreme Court's interpretation in *Jennings v. Rodriguez* clarifies that § 1225 historically applies to noncitizens "seeking admission into the country" (i.e., recent arrivals), while § 1226 governs detention of noncitizens "already in the country," which includes Petitioner. By adopting the government's expansive reading of § 1225, the July 8th Policy, and *Yajure Hurtado*, the Immigration Judge has effectively stripped Immigration Judges of bond jurisdiction over a broad class of long-present noncitizens, contrary to decades of regulatory and judicial practice, and thereby deprived Petitioner of the procedural protections guaranteed by the Due Process Clause.

127. Because Petitioner is detained without an individualized bond hearing, without a finding that his detention is necessary to serve a legitimate governmental purpose, and pursuant to an erroneous interpretation of the INA, his continued detention violates the Due Process Clause of the Fifth Amendment.

SECOND CAUSE OF ACTION

Violation of the Immigration and Nationality Act

128. Petitioner realleges and incorporates by reference all preceding paragraphs as though fully set forth herein.

129. Petitioner was arrested and detained by Respondents pursuant to the detention authority set forth in INA § 236(a), codified at 8 U.S.C. § 1226(a), which governs the detention of noncitizens already present in the United States and placed in removal proceedings under 8 U.S.C. § 1229a.

130. Noncitizens detained under § 1226(a) are statutorily eligible for release on bond or conditional parole and are entitled to an individualized custody determination by an Immigration Judge, unless they fall within a narrowly defined mandatory detention

category such as INA § 236(c), INA § 235(b)(1), or INA § 241, codified at 8 U.S.C. §§ 1226(c), 1225(b)(1), or 1231.

131. Petitioner does not fall within any statutory category subject to mandatory detention. He was not apprehended at or near the border, was not placed in expedited removal proceedings under § 1225(b)(1), is not an “arriving alien,” and is not subject to post-removal-order detention under § 1231.

132. Despite the DHS’s memorandum, the mandatory detention provision of 8 U.S.C. § 1225(b)(2), INA § 235(b)(2) does not apply to noncitizens like Petitioner who previously entered the United States, have resided in the country for a substantial period of time, and are later apprehended in the interior and placed in standard removal proceedings under § 1229a. Such individuals are detained under § 1226(a) and remain eligible for bond.

133. By extending § 1225(b)(2) to all noncitizens deemed inadmissible under INA § 212(a)(6)(A)(i), including long-present residents apprehended years after entry, *Matter of Yajure Hurtado* conflicts with the plain text, structure, and historical application of the INA and unlawfully eliminates statutory bond eligibility under § 1226(a).

134. Respondents’ application of INA § 235(b)(2) to Petitioner therefore exceeds their statutory authority and violates the Immigration and Nationality Act.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully request that this Honorable Court:

- (1) Assume jurisdiction over this action pursuant to 28 U.S.C. §§ 2241 and 1331;
- (2) Issue a Writ of Habeas Corpus under 28 U.S.C. § 2241 ordering Respondents to immediately release Petitioner from custody, or, in the alternative, to provide Petitioner with an individualized bond hearing before an Immigration Judge with jurisdiction under INA § 236(a) within five (5) days of the Court’s Order;

- (3) Issue an Order to Show Cause directing Respondents to show cause, within three (3) days pursuant to 28 U.S.C. § 2243, why the Petition for Writ of Habeas Corpus should not be granted;
- (4) Enter declaratory relief pursuant to 28 U.S.C. § 2201 declaring that noncitizens placed in removal proceedings under 8 U.S.C. § 1229a and charged as inadmissible under INA § 212(a)(6)(A) are not subject to mandatory detention absent applicability of 8 U.S.C. § 1226(c) or 8 C.F.R. § 1003.19(h)(2), and are therefore entitled to a bond hearing before an Immigration Judge with jurisdiction under INA § 236(a) and 8 C.F.R. § 1003.19;
- (5) Declare that Respondents' continued detention of Petitioner violates the Due Process Clause of the Fifth Amendment and exceeds their authority under the Immigration and Nationality Act;
- (6) Issue an Order prohibiting Respondents from transferring Petitioner outside this judicial district during the pendency of this action absent prior approval of the Court;
- (7) Award Petitioner reasonable attorneys' fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, and any other applicable authority; and
- (8) Grant such other and further relief as the Court deems just and proper.

Dated: January 30, 2026

Respectfully Submitted,

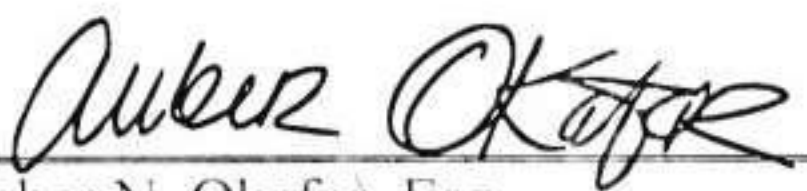

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ATTORNEY FOR PETITIONER

VERIFICATION OF COUNSEL

I represent Petitioner, Jose Perez Luna, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 30th day of January 2026.



Amber N. Okafor, Esq.