

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA**

Gustavo Sanchez-Hernandez,

Petitioner,

1. Kristi Noem, in her official capacity as
Secretary of Homeland Security;

2. Pamela Bondi, in her official capacity as
U.S. Attorney General;

3. Todd M. Lyons, in his official capacity
as Acting Director of Immigration and
Customs Enforcement;

4. Robert Cerna, in his official capacity as
Dallas ICE Field Office Director;

5. Fred Figueroa, in his official capacity as
Warden of Diamondback Correctional
Facility

Respondents.

Civil Case No. _____

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

I. INTRODUCTION

1. For nearly thirty years immigration judges (IJ), immigration lawyers for noncitizens, and attorneys from the Department of Homeland Security (DHS) construed 8 U.S.C. § 1226(a) to allow for bond eligibility for noncitizens who entered the country without inspection. This was well-settled law. Indeed, just this year when Congress passed the Laken Riley Act (LRA) it revealed its understanding that noncitizens who entered the country without inspection are eligible for a bond. The LRA's amendments to 8 U.S.C. § 1226(c) add provisions providing that noncitizens who entered the country illegally and

commit certain enumerated offenses are not eligible for a bond. Congress would not have passed the LRA if it understood that noncitizens who entered the country unlawfully were already subject to mandatory detention under 8 U.S.C. § 1225.

2. Notwithstanding the plain language of §§ 1226 and 1225, on September 5, 2025, the Board of Immigration Appeals (BIA) decided *Matter of Yajure Hurtado*, in which it determined that any person who entered the United States without admission is mandatorily detained under 8 U.S.C. § 1225(b)(2)(A). 29 I&N Dec. at 216. As the majority of district courts—and now the Seventh Circuit Court of Appeals—have determined, the Respondents’ interpretation departs from the statutes’ plain meaning. *See, e.g., Castanon-Nava v. U.S. Dep’t of Homeland Sec.*, 161 F.4th 1048, 1060 (7th Cir. 2025)); *Barco Mercado v. Francis*, No. 25-CV-6582 (LAK), 2025 WL 3295903 (S.D.N.Y. Nov. 26, 2025) (collecting 350 cases granting habeas relief); *Chogllo Chafra v. Scott*, No. 2:25-cv-00437-SDN, 2025 WL 2688541, at *5 (D. Me. Sep. 21, 2025) (“[N]early all district courts that have considered this issue have, after conducting persuasive, well-reasoned analyses of the statutory language and legislative history, rejected the Government’s broad interpretation of section 1225(b)(2).”) (collecting cases); *Belsai D.S. v. Bondi*, No. 25-cv-03682 (KMM/EMB), 2025 WL 2802947 (D. Minn. Oct. 1, 2025) (joining the “chorus” of courts concluding that § 1226 applies) (collecting cases); *Buenrostro-Mendez v. Bondi*, No. CV H-25-3726, 2025 WL 2886346 (S.D. Tex. Oct. 7, 2025) (“As almost every district court to consider this issue has concluded, “the statutory text, the statute’s history, Congressional intent, and § 1226(a)’s application for the past three decades” support finding that § 1226 applies to these circumstances.”).

3. The Petitioner entered the United States in or around 2006 without inspection. In 2024, eighteen years after his entry into the United States, he was apprehended by U.S. immigration officials within the interior of the United States. He was issued a Notice to Appear (NTA) and ordered to appear before an Immigration Judge (IJ). *See* Exh. A. (NTA).

4. On July 8, 2024, the U.S. Department of Homeland Security (DHS) released the Petitioner from custody pursuant to Form I-200A, Order of Release on Recognizance, which provided that, “[i]n accordance with section 236 of the Immigration and Nationality Act and the applicable provisions of Title 8 of the Code of Federal Regulations,” Petitioner was released on his “own recognizance.” *See* Exh. C. In doing so, DHS determined that the Petitioner posed no danger or flight risk and that pursuing his removal was not a priority. *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff’d* sub nom. *Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018) (“Release reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk.”). Petitioner has been residing in the United States since his release from immigration custody.

5. On or around January 8, 2026, Petitioner was re-detained by U.S. immigration officials. This sudden deprivation of liberty was done without a material change in circumstances that would render the Petitioner a danger or a flight risk. Petitioner is now held without bond, in flagrant violation of statutory and constitutional due process protections.

6. The erroneous BIA decision in *Yajure Hurtado* dictates that immigration judges (IJ) lack jurisdiction to consider bond requests for noncitizens who are present in the United

States without admission or parole. As the Petitioner entered the United States without inspection, he falls within the category of noncitizens that *Yajure Hurtado* has rendered ineligible for bond.

7. The Petitioner accordingly files this petition seeking a writ of habeas corpus ordering his release from custody immediately, or alternatively, ordering Respondents to provide him a bond hearing under 8 U.S.C. § 1226(a) within five days of this Court's order, at which DHS bears the burden to justify his redetention by demonstrating, by clear and convincing evidence, materially changed circumstances rendering Petitioner a danger to the community or a flight risk. *See, e.g., Velasquez Salazar v. Dedos*, 1:25-CV-00835-DHU-JMR, 2025 WL 2676729, 1, 7 (D.N.M. Sept. 17, 2025); *Erazo Rojas v. Noem*, No. EP-25-CV-443-KC, 2025 WL 3038262, 1, 4 (W.D. Tex. Oct. 30, 2025) (holding that "when ordering a bond hearing as a habeas remedy" the burden shifts to the Government).

II. PARTIES

8. Petitioner Gustavo Sanchez Hernandez is a noncitizen who is currently detained in immigration detention at Diamondback Correctional Facility in Watonga, Oklahoma.

9. Respondent Kristi Noem is the Secretary of the Department of Homeland Security (DHS) and is charged with implementing the immigration laws of the United States. Secretary Noem is being sued in her official capacity.

10. Respondent Pamela Bondi is the Attorney General for the United States and is charged with overseeing the Executive Office of Immigration Review (EOIR). General Bondi is being sued in her official capacity.

11. Respondent Todd M. Lyons is the Acting Director of the Immigration and Customs Enforcement (ICE), a sub-agency of Homeland Security. It is under ICE's authority that the Petitioner is being held without bond. Acting Director Lyons is being sued in his official capacity.

12. Respondent Robert Cerna is the Dallas Field Office Director for the ICE Enforcement and Removal Operations, which covers Watonga, Oklahoma. It is under Respondent Cerna's order that the Petitioner is in immigration custody. Respondent Cerna is being sued in his official capacity.

13. Respondent Fred Figueroa is the Warden and/or immediate custodian at Diamondback Correctional Facility in Watonga, Oklahoma. Respondent Fred Figueroa is being sued in his official capacity.

III. JURISDICTION

14. This Court has subject matter jurisdiction over Petitioner's petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. The Court also has jurisdiction pursuant to 28 U.S.C. § 1331 (Federal Question Jurisdiction) inasmuch as the case is a civil action arising under the laws of the United States.

15. Although only the Court of Appeals has jurisdiction to review removal orders directly through a petition for review, *see* 8 U.S.C. §§ 1252(a)(1), (a)(5), (b), District Courts have jurisdiction to hear habeas corpus claims by noncitizens challenging the lawfulness or constitutionality of their detention by ICE. *See, e.g., Jennings v. Rodriguez*, 583 U.S. 281, 292-96 (2018); *Demore v. Hyung Joon Kim*, 538 U.S. 510, 516-17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687-88 (2001).

16. Venue is proper in this district because the Petitioner is detained within this district, and a substantial amount of the events giving rise to this claim occurred within this district. 28 U.S.C. § 1391(e)(1).

IV. LEGAL FRAMEWORK REGARDING MANDATORY IMMIGRATION DETENTION AND BOND ELIGIBILITY

A. Congress deliberately provided for immigration detention in two different statutes, 8 U.S.C. § 1226 and 8 U.S.C. § 1225, to address two very different groups of noncitizens in different circumstances.

17. This case involves the interplay between 8 U.S.C. § 1226 (general custody for individuals in traditional removal proceedings before an IJ) and the mandatory custody provisions of 8 U.S.C. § 1225(b)(2) that apply to those noncitizens seeking admission at the port of entry or the border. The Respondents' authority to detain noncitizens under §§ 1226 or 1225 depends on the individualized circumstances of the noncitizen and the procedural posture of the removal case.

18. Both §§ 1226(a) and 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996 to provide detention for different subsets of noncitizens. Pub. L. No. 104-208, Div. C, §§ 302-03, 110 Stat. 3009-546, 3009-582 to 3009-583, 3009-585.

19. According to the IIRIRA's legislative history, § 1226(a) was intended to "restate[] the [then-] current provisions of section 242(a)(1) regarding the authority of the Attorney General to arrest, detain, and release *on bond* an alien who is not lawfully in the United States." See *Rodriguez v Bostock*, 779 F. Supp. 3d 1239, 1260 (W.D. Wash. Sep. 30, 2025) (quoting H.R. Rep. No. 104-469, at 229 (1996) (emphasis added)).

20. In 1997, following the enactment of the IIRIRA, the Executive Office for Immigration Review (EOIR) drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a) “and eligible for bond and bond redetermination.” *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).

21. Thus, in the decades that followed, most people who entered without inspection and were placed in standard removal proceedings received bond hearings under § 1226(a). 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. Rept. No. 104-469, Part 1, at 229 (1996) (noting that § 1226(a) simply “restates” the detention authority previously found at § 1252(a)).

i. The Petitioner is in custody under 8 U.S.C. § 1226 and the IJ can order his release on bond.

22. Section 1226(a) “authorizes the Government to detain certain aliens *already in the country* pending outcome of removal proceedings.” *Jennings*, 583 U.S. at 289 (emphasis added). In July 2024, Petitioner was arrested on a warrant pursuant to 8 U.S.C. § 1226 and subsequently released on an Order of Recognizance pursuant to that same authority. *See* Exh. C. He was served with a NTA commencing removal proceedings under § 1229a. Almost two years later, while residing in the United States, ICE redetained the Petitioner

pursuant to § 1226(a) pending the outcome of those proceedings. The logical conclusion, therefore, is that his present detention continues to be governed under § 1226(a).

23. Section 1226(a) establishes the discretionary framework for noncitizens arrested and detained “[o]n warrant issued by the Attorney General.” For such individuals, the Attorney General (1) “may continue to detain the arrested alien,” (2) “may release the alien on . . . (A) bond of at least \$1,500,” or (B) “may release the alien on . . . conditional parole.” 8 U.S.C. §§ 1226(a)(1)-(2). Release on an order of recognizance is a form of conditional parole under § 1226(a)(2)(B). *See Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924, at *2 (D. Mass. Sept. 9, 2025).

24. DHS makes an initial custody determination on whether to allow the noncitizen to be released under § 1226(a). 8 C.F.R. §§ 1236(c)(8), (d)(1). However, such determinations “may be reviewed by an Immigration Judge pursuant to 8 C.F.R. § 1236.” 8 C.F.R. § 1003.19(a).

25. An IJ may grant bond unless the government shows danger by clear and convincing evidence or flight risk by a preponderance of the evidence. *Hernandez-Lara v. Lyons*, 10 F.4th 19, 41 (1st Cir. 2021).

26. Once an individual has been released from custody, DHS is only authorized to revoke release upon a finding of materially changed circumstances meriting the noncitizen’s return to custody. *See, e.g., Saravia v. Sessions*, 280 F. Supp. 3d 1168 (N.D. Cal. 2017) (“Once a noncitizen has been released, the law prohibits federal agents from rearresting him merely because he is subject to removal proceedings. Rather, the federal agents must be able to present evidence of materially changed circumstances—namely,

evidence that the noncitizen is in fact dangerous or has become a flight risk, or is now subject to a final order of removal.”); *see also Matter of Sugay*, 17 I&N Dec. 637, 640 (BIA 1981) (finding a change in circumstances, in part, when it was determined that the noncitizen was “wanted for murder in the Philippines . . .”).

27. Section 1226(c) requires mandatory detention for specifically enumerated categories of noncitizens. Section 1226(c), until recently, required the detention of noncitizens who are inadmissible or deportable because they have committed or been sentenced for certain criminal offenses, or because they are affiliated with terrorist groups or activities. *See* §§ 1226(c)(1)(A)-(D).

28. In January 2025, Congress enacted the LRA, which expanded this list by adding § 1226(c)(1)(E), which requires detention of individuals who (1) are inadmissible under §§ 1182(a)(6)(A), (C), or (7), *and* (2) who have been charged with, arrested for, or convicted of certain crimes, including burglary, theft, shoplifting, or crimes resulting in death or serious bodily injury. Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).

29. The enactment of the LRA confirms that Congress did not intend for all noncitizens who entered the country unlawfully and are found within the interior of the United States to be subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). Indeed, the LRA explicitly provides for mandatory detention for noncitizens who both entered the country unlawfully *and* committed one of the above enumerated offenses within the United States. The LRA would not have been necessary if all noncitizens who entered the country illegally are subject to mandatory detention under § 1225(b)(2)(A). *Yajure Hurtado* effectively provides that LRA was an unnecessary, needless bill.

30. Section 1226(a) leaves no doubt that it applies to people who confront removal for being inadmissible to the United States, including those who are present without admission or parole.

ii. The Petitioner is not subject to mandatory detention under § 1225(b)(2)(A).

31. Section 1225(b)(2)(A), the provision invoked by the Respondents, is plainly not applicable here since it only applies to those noncitizens seeking admission. The statute states:

In the case of an *who is an applicant for admission*, if the examining immigration officer determines that an alien *seeking admission* is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title.

(Emphasis added). For § 1225(b)(2)(A) to apply, “several conditions must be met—in particular, an ‘examining immigration officer’ must determine that the individual is: (1) an ‘applicant for admission’; (2) ‘seeking admission’; and (3) ‘not clearly and beyond a doubt entitled to be admitted.’” *Martinez v. Hyde*, No. 1:25-cv-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238, at *6–7 (D. Mass. July 24, 2025). “One who is ‘seeking admission’ is *presently* attempting to gain admission into the United States.” *Belsai D.S.*, 2025 WL 2802947, at *6 (emphasis added). “Admission” refers to “lawful entry . . . into the United States after inspection and authorization by an immigration officer.” *Id.* § 1101(a)(13)(A). When Respondents detained Petitioner years after he entered the United States, he was not seeking entry, much less “lawful entry . . . after inspection and authorization by an immigration officer.” *See Martinez v. Mukasey*, 519 F.3d 532, 544 (5th Cir. 2008), *as*

amended (June 5, 2008) (“Under th[e] statutory definition, ‘admission’ is the lawful *entry* of an alien after inspection, something quite different, obviously, from post-entry adjustment of status.” (Emphasis in original)).

32. As the Supreme Court has explained, the detention authority under 1225(b)(2)(A) applies “at the Nation’s borders and ports of entry, where the Government must determine whether an alien seeking to enter the country is admissible.” *Jennings*, 583 U.S. at 287; *see also Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379, at *18 (E.D. Mich. Aug. 29, 2025) (“1225(b)(2)(A) applies when people are being inspected, which usually occurs at the border, when they are seeking lawful entry into this country.”). A person detained under § 1225(b)(2) may be released only if paroled “for urgent humanitarian reasons or significant public benefit.” 8 U.S.C. § 1182(d)(5)(A).

33. As stated above, the Petitioner was previously released under § 1226(a), which allows for a noncitizen to be released on his own recognizance, i.e., on “conditional parole”, pending removal proceedings. Moreover, he has been in the United States for years subsequent to an unlawful entry and was most recently arrested in the interior of the United States. As such, he is not in custody under § 1225(b)(2)(A).

B. The Respondents’ misconstruction of § 1225(b)(2)(A) as encompassing all noncitizens who entered the country illegally is contrary to decades of established practice and has resulted in the unlawful detention of the Petitioner.

34. The Respondents’ misconstruction of the statutes is part of their scheme to greatly expand immigration detention in general by using the mandatory detention provisions of 8 U.S.C. § 1225.

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

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

37. On September 5, 2025, the BIA—reversing decades of practice—adopted this same position in *Yajure Hurtado*. 29 I&N Dec. at 216. There, the BIA 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. *Id.*

38. As demonstrated in the string cite above, the Respondents efforts to expand 8 U.S.C. § 1225 to provide for more mandatory detention has been rejected by courts across the nation. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like Petitioner, who have already entered and were residing in the United States at the time they were apprehended.

V. FACTS

39. The Petitioner, a noncitizen, entered the United States without inspection approximately in 2006. Petitioner has four United States citizen children ages 21, 15, 14, and 8. His family is experiencing substantial pain and suffering in his absence.

40. In 2024, the Petitioner was arrested by immigration officials pursuant a warrant within the interior of the United States. *See* Exh. B. He was served with an NTA, which charges him as inadmissible for being present in the United States without having been admitted or paroled. *See* Exh. A. Thereafter, DHS ordered the Petitioner's release on his own recognizance, thereby determining that he posed neither a danger to the community nor a flight risk. *See* Exh. C. *See Saravia*, 280 F. Supp. 3d at 1176. The Petitioner has fully complied with all conditions of his release.

41. Petitioner's adult United States citizen son filed an I-130, Petition for Alien Relative naming the Petitioner as the beneficiary in or around November 2025. If approved, the Petitioner may seek an immigrant visa abroad.

42. While in removal proceedings on August 19, 2025, Petitioner applied for Cancellation of Removal for Certain Non-Permanent Residents, which if granted would confer lawful permanent resident status. *See* Exh. D.

43. Petitioner's next hearing date is February 11, 2026 with Immigration Judge Nathan L. Herbert with the El Paso Immigration Court.

44. On or about January 8, 2026, Petitioner was re-detained by DHS within the interior of the United States. The re-detention was not based on any materially changed circumstances that would now render him a flight risk or danger to the community. Indeed, "[t]he law requires a change in relevant facts, not just a change in [the government's] attitude." *Singh v. Andrews*, No. 1:25-CV-00801-KES-SKO (HC), 2025 WL 1918679, at *7 (E.D. Cal. July 11, 2025) (quoting *Valdez v. Joyce*, 25 Civ. 4627 (GBD), 2025 WL 1707737, at *3 n.6 (S.D.N.Y. June 18, 2025)).

45. The Respondents are detaining the Petitioner with no bond at Diamondback Correctional Facility in Watonga, Oklahoma. *Yajure Hurtado* renders the Petitioner ineligible for bond.

VI. EXHAUSTION OF ADMINISTRATIVE REMEDIES

46. The Petitioner has exhausted his administrative remedies to the extent required by law. It would be futile to require the Petitioner to file a bond redetermination request with the Immigration Court given that the BIA has already announced its decision on the issue of bond jurisdiction in *Yajure Hurtado*. In fact, *Yajure Hurtado* states that “Immigration Judges lack authority to hear bond requests or to grant bond to aliens, like the respondent, who are present in the United States without admission.” *Yajure Hurtado*, 29 I&N Dec. at. 225 (emphasis added).

VII. CLAIMS FOR RELIEF

Count I. Statutory claim: The Petitioner is detained under § 1226(a) and is not subject to mandatory detention under § 1225(b)(2).

47. The Petitioner has a clear right to a custody hearing by an IJ under 8 U.S.C. § 1226(a)(2). The Respondents are detaining the Petitioner in direct violation of this statute which authorizes the IJ to grant release from custody.

48. The statute cannot be clearer and requires that the Petitioner be provided with the opportunity to present his custody redetermination case before the IJ. While the BIA reached the opposite conclusion in *Yajure Hurtado*, this interpretation is erroneous and even if it were plausible, it is not entitled to *Chevron* deference pursuant to the Supreme

Court's decision in *Loper Bright Enterprises v. Raimondo*. 603 U.S. 369, 369 (2024) (overruling *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984)).

49. Moreover, in *Monteon-Camargo v. Barr*, the Fifth Circuit found that where the BIA announces a “new rule of general applicability” which “drastically change[s] the landscape,” retroactive application would “contravene basic presumptions about our legislative system” and should in that case be disfavored unless the government can demonstrate that the advantages of retroactive application outweigh these grave disadvantages. 918 F.3d 423, 430-431 (2019) (quoting *Matter of Diaz-Lizarraga*, 26 I&N Dec. 847, 849, 852 (BIA 2016)). Applying *Yajure Hurtado* to individuals like Petitioner, who entered the United States without inspection years before the BIA's decision, is impermissibly retroactive. The BIA's decision contradicts decades of statutory practice and administrative precedent, under which such individuals were detained under § 1226(a) and entitled to a bond hearing. Retroactively applying *Yajure Hurtado* strips these long-established rights and imposes a new disability on past actions by rendering them ineligible for bond, contrary to settled expectations. *See Landgraf v. Usi Film Prods.*, 511 U.S. 244, 265 (1994) (“As Justice Scalia has demonstrated, . . . [e]lementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly; settled expectations should not be lightly disrupted.”).

Count II. Fifth Amendment Due Process Violation

50. The Respondents may not deprive a person of life, liberty, or property without due process of law. U.S. Const. Amend. V. The Petitioner has a weighty liberty interest as his

freedom “from government . . . detention . . . lies at the heart of the liberty that [the Fifth Amendment] protects.” *Zadvydas*, 533 U.S. at 690.

51. Individuals who have been released from custody gain a protected liberty interest in remaining free from custody, and ICE must show materially changed circumstances to justify redetention. *See, e.g., Matter of Sugay*, 17 I. & N. at 640; *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019); *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *11 (W.D. Tex. Sept. 22, 2025) (“[O]nce released from immigration custody, noncitizens acquire ‘a protectable liberty interest in remaining out of custody on bond.’”); *Singh*, 2025 WL 1918679, at *6 (“Furthermore, the Supreme Court has held that, even when a statute authorizes revocation of an individual's freedom, the individual may retain a protected liberty interest under the Due Process Clause.”).

52. 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). *See Martinez v. Noem*, No. 5:25-CV-1007-JKP, 2025 WL 2598379, at *2 (W.D. Tex. Sept. 8, 2025). The *Mathews* 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.

53. These factors all favor a determination that the Petitioner is being held without due process of law. The deprivation of his liberty interest based on *Yajure Hurtado* carries a high risk that the Petitioner's liberty is being erroneously deprived.

54. The Respondents' re-detention of Petitioner years after his release on his recognizance, without prior notice, any showing of changed circumstances, or a meaningful opportunity to contest his re-detention violates the Fifth Amendment's Due Process Clause.

Count III. *Accardi* Violation

55. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of "Apprehension, Custody, and Detention of Aliens," the agencies explained that "[d]espite being applicants for admission, aliens who are *present without having been admitted or paroled* (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination." 62 Fed. Reg. 10312, 10323 (emphasis added). The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.

56. Nonetheless, pursuant to *Yajure Hurtado*, EOIR has a policy and practice of applying § 1225(b)(2) to individuals like Petitioner.

57. The application of § 1225(b)(2)(A) to Petitioner unlawfully mandates his continued detention in violation of § 1226(a) and its regulations at 8 C.F.R. §§ 236.1, 1236.1, and 1003.19, which for decades have recognized that noncitizens present without admission

are eligible for a bond hearing. *See Jennings*, 583 U.S. at 288–29 (describing § 1226 detention as relating to people “inside the United States” and “present in the country.”). Such protection is not a mere regulatory grace but is a baseline Due Process requirement. *See Hernandez-Lara v Lyons*, 10 F. 4th 19, 41 (1st Cir. 2021). The only exception for such noncitizens subject to § 1226(a) is where the noncitizen is subject to mandatory detention under 8 U.S.C. § 1226(c) for certain crimes and certain national security grounds of removability. *See Demore v. Kim*, 538 U.S. 510, 512 (2003).

58. Government agencies are required to follow their own regulations. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954); *United States v. Heffner*, 420 F.2d 809, 811 (4th Cir. 1969) (“An agency of the government must scrupulously observe rules, regulations, or procedures which it has established. When it fails to do so, its action cannot stand and courts will strike it down.”). A violation of the *Accardi* doctrine may itself constitute a violation of the Fifth Amendment Due Process Clause, particularly when liberty is at stake. *See, e.g., Sering Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 160 (W.D.N.Y. 2025) (citing *Rombot v. Souza*, 296 F. Supp. 3d 383, 388 (D. Mass. 2017)).

VIII. PRAYER FOR RELIEF

For the foregoing reasons, and consistent with 28 U.S.C. § 1657(a), the Petitioner requests that the Respondents be cited to appear and that, upon due consideration, the Court promptly enter an order:

- a. Ordering the Respondents, pursuant to 28 U.S.C. § 2243, to demonstrate within five days why the Petitioner’s writ of habeas corpus should not be granted.

- b. Granting a writ of habeas corpus finding that the Petitioner's detention is unlawful and unconstitutional;
- c. Providing declaratory relief that the Petitioner's detention is unlawful;
- d. Ordering Petitioner's immediate release from custody, or, in the alternative, ordering Respondents to provide him a bond hearing under 8 U.S.C. § 1226(a) within five days of this Court's order, at which DHS bears the burden to justify his re-detention by demonstrating, by clear and convincing evidence, materially changed circumstances rendering Petitioner a danger to the community or a flight risk;
- e. Ordering that Respondents not transfer the Petitioner to any facility outside of the boundaries of the Western District of Oklahoma while this writ is pending.
- f. Awarding Petitioner reasonable attorney's fees, expenses and costs; and
- g. Granting Petitioner such other and further relief as the Court may deem just and proper.

Respectfully submitted,

/s/ Lance Curtright
Lance Curtright
Texas Bar No. 24032109
De Mott, Curtright, & Armendariz, LLP
8023 Vantage Drive, Ste. 800
San Antonio, Texas 78230
(210)590-1844 (telephone)
lance@dmcausa.com
Appearing pro hac vice

/s/ Kelli J. Stump
Kelli J. Stump
OBA #21374
Kelli J. Stump, PLLC

111 NW 15th Street
Oklahoma City, OK 73103
(405) 217-4550
kelli.stump@stumpimmigration.com

ATTORNEYS FOR PETITIONER

VERIFICATION UNDER 28 U.S.C. § 2242

Acting on behalf of the Petitioner, I verify that the foregoing factual allegations are true and correct as required by 28 U.S.C. § 2242.

/s/ Lance Curtright
Lance Curtright

/s/ Kelli Stump
Kelli Stump

CERTIFICATE OF SERVICE

I hereby certify that on February 4, 2026, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing. Based on the records currently on file, the Clerk of Court will transmit a Notice of Electronic Filing to the following ECF registrants:

Robert J. Troester, U.S. Attorney

Western District of Oklahoma

210 W. Park Avenue, Suite 400

Oklahoma City, OK 73102

s/Kelli J. Stump

Kelli Stump, OBA No. 21374