UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
WAYCROSS DIVISION

Vasily DONTSOV, Petitioner, v. WARDEN of Folkston ICE Processing Center; GEORGE STERLING, Director of the Atlanta Field Office, U.S. Immigration and Customs Enforcement; TODD LYONS, in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement; KRISTI NOEM, in her official capacity as U.S. Secretary of Homeland Security; PAMELA BONDI, in her official capacity as U.S. Attorney General; Respondents.	Civil Action No.: PETITION FOR WRIT OF HABEAS CORPUS

Petitioner, Vasily Dontsov, by and through his undersigned counsel, respectfully petitions for a writ of habeas corpus and brings this complaint for declaratory and injunctive relief to compel his release from unlawful detention by the U.S. Department of Homeland Security since being unlawfully re-detained without first being provided a due process hearing to determine whether his incarceration is justified. Respondents are detaining him in violation of the Constitution and laws of the United States.

INTRODUCTION

1. This case challenges the unlawful and indefinite re-detention without a bond under a new and erroneous interpretation of the Immigration and Nationality Act (INA) and in violation of the Fifth Amendment Due Process Clause of the United States Constitution, and the Administrative Procedure Act ("APA"). Specifically, Petitioner contends that: (1) he is entitled to a bond hearing under 8 U.S.C. § 1226(a) as an individual already residing in the United States rather than mandatory detention under 8 U.S.C. § 1225(b)(2); (2) the Laken Riley Act's mandatory detention under 8 U.S.C. 1226(c)(1)(E) cannot be applied retroactively to conduct occurred before the Act's enactment; and (3) his prolonged detention without a meaningful opportunity for release violates fundamental due process principles.

2. Petitioner Vasily Dontsov is detained without the possibility of

bond solely because the Department of Homeland Security (DHS) and the Executive Office for Immigration Review (EOIR) have chosen to treat him as if he were an "arriving" alien and present at the border, even though they had already processed him pursuant to 8 U.S.C. § 1226(a) at his initial encounter and released him on his own recognizance. Immigration and Customs Enforcement (ICE)'s misapplication of 8 U.S.C. § 1225(b)(2)(A) and the Board of Immigration Appeals' (BIA's) recent decision in *Matter of Yajure Hurtado* have stripped Petitioner — and thousands of similarly situated individuals — of the bond hearings guaranteed by § 1226(a).

3. Petitioner Vasily Dontsov is in the physical custody of Respondents at the Folkston D. Ray ICE Processing Center. He now faces unlawful detention because the DHS and the EOIR have concluded that Petitioner is subject to mandatory detention.

JURISDICTION AND VENUE

4. Petitioner is presently in custody under or by color of the authority of the United States, and he challenges his custody as in violation of the Constitution, laws, or treaties of the United States.

5. This Court has original subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, Section 9, Clause 2 of the United States Constitution (Suspension Clause).

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

7. Petitioner is detained at the Folkston ICE Processing Center in Folkston, Georgia, at the time of filing. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky,* 410 U.S. 484, 493-500 (1973), venue therefore lies in the Southern District of Georgia, Waycross Division, the judicial district in which Petitioner currently is detained.

8. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in this District, where Petitioner is now in Respondents' custody. *See* 28 U.S.C. § 1391(e).

REQUIREMENTS OF 28 U.S.C. § 2243

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

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

PARTIES

11. Petitioner Vasily Dontsov is a 40-year-old to be a citizen of Russia. He is currently detained by Respondents at the Folkston ICE Processing Center. After arresting Petitioner on November 13, 2025, ICE did not set bond and Petitioner is unable to obtain review of his custody by an immigration judge, pursuant to the Board's decision in *Matter of Yajure Hurtado,* 29 I. & N. Dec. 216 (BIA 2025).

12. Respondent Warden of Folkston ICE Processing Center has immediate physical custody of Petitioner. Respondent Warden is responsible for the operations of the Folkston ICE Processing Center, where Petitioner is detained. He is sued in his official capacity.

13. Respondent George Sterling is the Director of the Atlanta Field Office

for ICE. He is responsible for ICE's operations in the area of the Petitioner's detention. He is a legal custodian of Petitioner. He is sued in his official capacity.

14. Respondent Todd Lyons is the Acting Director of ICE. He is responsible for the administration of ICE and the implementation and enforcement of immigration laws, including detention. He is a legal custodian of Petitioner. He is sued in his official capacity.

15. Respondent Kristi Noem is the U.S. Secretary of the Department of Homeland Security and is responsible for the administration of DHS. She is responsible for the implementation and enforcement of the INA and oversees ICE, which is responsible for Petitioner's detention. Ms. Noem has ultimate custodial authority over Petitioner. She is sued in her official capacity.

16. Respondent Pamela Bondi is the U.S. Attorney General of the United States. She is responsible for the Department of Justice (DOJ), of which the EOIR is a component agency. She is sued in her official capacity.

LEGAL FRAMEWORK

I. Detention Authority and Statutory Framework

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

18. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an Immigration Judge (IJ). *See* 8 U.S.C. § 1226(a). Individuals in § 1226(a) detention are generally entitled to a bond hearing at the outset of their detention. *See* 8 C.F.R. §§ 1003.19(a), 1236.l(d). However, noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention. *See* 8 U.S.C. § 1226(c).

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

20. Last, the INA also provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings. *See* 8 U.S.C. § 1231(a)-(b).

21. This case concerns the detention provisions at §§ 1225(b)(2), 1226(a), and 1226(c)(1)(E).

22. The detention provisions at § 1226(a) and§ 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104-208, Div. C, §§ 302-03, 110 Stat. 3009-546, 3009-582 to 3009-583, 3009-585. Section 1226(a) was most recently amended in 2025 by the Laken Riley Act, Pub. L. No.119·1, 139 Stat. 3 (2025).

23. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

24. In the decades that followed, most people who entered without inspection and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

25. On July 8, 2025, ICE, "in coordination with" the DOJ, announced a new policy that rejected well-established understanding of the statutory framework and reversed decades of practice. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission,"[1] claims

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[1] *Available at* https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission.

that all persons who entered the United States without inspection shall now be subject to mandatory detention under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended and affects those who have resided in the United States for months, years, and even decades.

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

27. Since Respondents adopted their new policies, dozens of federal courts have rejected their new interpretation of the INA's detention authorities. Courts have likewise rejected *Matter of Yajure Hurtado,* which adopts the same reading of the statute as ICE.

28. Court after court has adopted the same reading of the INA's detention authorities and rejected ICE and EOIR's new interpretation, including our sister courts in the Tenth Circuit. *See Garcia Cortes v. Noem,* No, 1:25-cv-02677, 2025 WL 2652880 (D. Colo. Sept. 16, 2025); *Salazar v. Dedos,* No. 1:25-cv-00835, 2025 WL 2676729 (D.N.M. Sept. 17, 2025); and *Gamez Lira v. Noem,* No. 1:25-cv-00855 (D.N.M. Sept. 24, 2025).

29. Other District Courts across the country have also rejected ICE's erroneous interpretation. *See, e.g., Gomes v. Hyde,* No. 1:25-CV·11571·JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde,* No. CV 25-11613-BEM, ••• F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v. Figueroa,* No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted,* No. CV-25-02157· PHX·DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis,* No. 26 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson,* No. Q:25·cv·03142·SRN·SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola·Gonzalez v. Noem,* No. 5:25-cv·01 789· ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde,* No. 25·11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce,* No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser,* No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem,* No. 1:25-cv·02428·JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump,* No. 3:25·cv·01093·JE· KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi,* No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d ----, 2025 WL 2466670 (D. Minn. Aug. 27, 2025) *Lopez-Campos v. Raycraft,* No. 2:25-cv·12486·BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez Garcia v. Noem,* No. 25-cv· 02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem,* No. 5:25·CV·02304 CAS (BFM), 2025 WL

2591530 (C.D. Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft,* No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde,* No. 1:25-CV-11981• JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *see also, e.g., Palma Perez v. Berg,* No. s:25CV494, 2025 WL 2531566, at *2 (D. Neb. Sept. 3, 2025) (noting that "[t]he Court tends to agree" that§ 1226(a) and not§ 1225(b)(2) authorizes detention); *Jacinto v. Trump,* No. 4:25·cv·03161·JFB-RCC, 2025 WL 2402271 at *3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer,* No. 4:25-cv·03158·JFB·RCC, 2025 WL 2374224 at *2 (D. Neb. Aug. 14, 2025) (same).

30. Section 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." These removal hearings are held under 8 U.S.C. § 1229(a), to "decid[e] the inadmissibility or deportability of a [noncitizen]."

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

393, 400 (2010)); *see also Gomes,* 2025 WL 1869299, at *7.

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

33. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. The statute's entire framework is premised on inspections at the border of people who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A). Indeed, the U.S. Supreme Court has explained that this mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether a [noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez,* 583 U.S. 281, 287 (2018).

34. Many courts have read this "seeking admission" requirement to mean **a noncitizen present in the United States without admission who has recently arrived and is actively seeking admission**, not a noncitizen who has been residing in the country for years. *Ramiro Rodriguez Rivera v. Bondi*, No. 1:25-CV-1979-RP, 2025 WL, at *5 (W.D. Tex. Dec. 19, 2025); *Rojas Vargas v. Bondi*, No. 1:25-CV-01699-DAE, 2025 WL 3251728, at *3 (W.D. Tex. Nov. 5, 2025); *Rodriguez-Acurio v. Almodovar*, No. 2:25-CV-6065 (NJC), 2025 WL 3314420, at *22 (E.D.N.Y. Nov. 28, 2025); *Romero v. Hyde*, 795 F. Supp. 3d

271, 283–84 (D. Mass. 2025)[24].

35. 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.

36. Reading § 1225(b)(2) as the government suggests would make "seeking admission" surplus language that has no effect on the meaning of the provision. As the District of Massachusetts explained in *Martinez v. Hyde*, 792 F. Supp. 3d 211, 218 (D. Mass. 2025): "Respondents' selective reading of the statute—which ignores its 'seeking admission' language—violates the rule against surplusage and negates the plain meaning of the text".

37. It is well established that "[i]nterpretations of statutes and regulations that avoid surplusage are favored." *Sanderson Farms, Inc. v. Occupational Safety & Health Rev. Comm'n*, 964 F.3d 418, 425 (5th Cir. 2020)[27].

38. If § 1225(b)(2) were so broad as to encompass all noncitizens present without admission, it would also eliminate much of the meaning of § 1226: nearly every noncitizen would be subject to mandatory detention, making it unclear why the INA also contains a broadly-worded discretionary-detention provision. *Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 488 (S.D.N.Y. 2025).

II. The Laken Riley Act's Mandatory Detention Provisions are not

retroactive

39. The Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025), amended 8 U.S.C. § 1226 to create mandatory detention for certain categories of individuals. Specifically, the Act created § 1226(c)(1)(E), which requires mandatory detention for noncitizens who both: (1) are charged as being inadmissible for entry without inspection or lacking valid documentation to enter the United States; and (2) have been arrested, charged with, or convicted of certain enumerated crimes.

40. However, those provisions should not be applied retroactively based upon a noncitizen's pre-enactment conduct, since there is a presumption against retroactive application of statutes.

41. Under the well-established framework set forth in *Landgraf v. USI Film Products*, 511 U.S. 244 (1994), and reaffirmed in *Vartelas v. Holder*, 566 U.S. 257 (2012), there exists a strong presumption against the retroactive application of federal statutes absent clear congressional intent. This presumption is "deeply rooted" in our jurisprudence and is founded upon "elementary considerations of fairness dictating that individuals should have an opportunity to know what the law is and to conform their conduct accordingly".

42. The *Landgraf* Court established a two-step analytical framework for determining whether a statute applies retroactively:

43. First, courts must determine whether Congress has expressly prescribed the statute's proper reach. If Congress has clearly indicated its intent regarding temporal scope, that intent controls.

44. Second, if the statute contains no such express command, courts apply the traditional presumption against retroactive application to statutes that would have retroactive effect. *Landgraf*, 511 U.S. at 280[5].

45. A statute has an impermissible "retroactive effect" when it "would impair rights a party possessed when he acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed." *Id.* at 280. The critical inquiry is whether the statute "attaches new legal consequences to events completed before its enactment." *Id.*

46. Critically, the Laken Riley Act contains no express provision addressing its temporal scope or authorizing retroactive application to conduct occurring before its enactment. The statute is silent as to whether it applies to arrests, charges, or convictions that occurred prior to the Act's effective date. This silence is dispositive under Landgraf's first step: absent clear congressional intent to the contrary, the presumption against retroactivity controls.

47. Under Landgraf's second step, this Court must determine whether applying the Laken Riley Act to Petitioner would produce a retroactive effect. The answer is yes.

The Act "attaches new legal consequences"—namely, mandatory detention without bond eligibility—to "events completed before its enactment"—namely, Petitioner's criminal conduct in October 2024.

48. The Supreme Court's decision in *Vartelas v. Holder* is directly on point. There, the Court held that a 1996 immigration law amendment could not be applied retroactively to bar reentry based on a pre-1996 conviction, because doing so would "attach [] a new disability (denial of reentry) in respect to past events (Vartelas' pre-IIRIRA offense, plea, and conviction)". The Court emphasized that "[t]he presumption against retroactivity is founded on the principle that individuals should have an opportunity to know what the law is and to conform their conduct accordingly," and that this principle is "applicable with particular force" when the retroactive effect would increase liability for past conduct.

49. Here, as in *Vartelas*, applying the Laken Riley Act to Petitioner would impermissibly attach a new disability—mandatory detention without an opportunity for bond —to conduct that predated the Act's enactment. At the time of Petitioner's conduct in October 2024, the governing legal framework subjected him, at most, to discretionary detention under 8 U.S.C. § 1226(a), which included the right to a bond hearing.

50. The government may argue that the "relevant event" is not Petitioner's pre-Act conduct but rather his ongoing detention under the new statute. The Supreme Court rejected this argument in *Vartelas*. The Court found "disingenuous the Government's

argument that no retroactive effect is involved in this case because the relevant event is the alien's post-IIRIRA return to the United States." *Vartelas*, 566 U.S. at 269. The Court explained that while the alien's return "occasioned his treatment as a new entrant," "the reason for his 'new disability' was his pre-IIRIRA conviction. That past misconduct is the wrongful activity targeted by § 1101(a)(13)(C)(v)." Id.

51. Similarly, although Petitioner's present detention is the circumstance that triggers application of the Laken Riley Act, the source of the new disability is Petitioner's pre-enactment conduct. That past conduct is the very activity targeted by § 1226(c)(1)(E). Under Vartelas, when a statute imposes new legal consequences based on completed conduct, it may not be applied retroactively absent a clear statement from Congress. Because the Laken Riley Act mandates detention based on conduct that occurred before its enactment, it cannot lawfully be applied to Petitioner.

52. Several district courts across the country have recognized that 8 U.S.C. § 1226(c), as enacted by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), applies only prospectively because Congress tied mandatory detention to a future event—the alien's release from criminal custody—occurring after the statute's effective date. The phrase "when the alien is released" refers to release from custody for the qualifying criminal offense that triggers mandatory detention, not to any later immigration custody. See Alwaday v. Beebe, 43 F. Supp. 2d 1130, 1133 (D. Or. 1999); Alikhani v. Fasano, 70 F. Supp. 2d 1124, 1130 (S.D. Cal. 1999). Because that

release is the operative triggering event, courts have held that § 1226(c) applies only to aliens released from criminal custody after IIRIRA took effect. Consistent with this reading, the court in Velasquez v. Reno, 37 F. Supp. 2d 663, 670 (D.N.J. 1999), concluded that it "need not proceed past the first step of the [Landgraf] analysis because Congress has expressly provided that 8 U.S.C. § 1226(c) is to be applied only prospectively to aliens who were released from criminal custody after the statute took effect.

53. In a recent decision from January 28, 2026, the Western District Court of Texas ruled that, although the Laken Riley Act expanded the crimes included in the mandatory detention provisions of the INA, it did not include an express effective date or any language indicating that Congress intended this provision to apply retroactively. See *Ruben Melendez Hernandez v. Bondi et al.*, No. 1:25-cv-01811-DAE. (Western District of Texas, January 28, 2026). Exhibit F, Order of the WDTX case 1:25-cv-01811-DAE.

STATEMENT OF FACTS

54. Petitioner, Vasily Dontsov, is a 40-year-old alleged citizen of Russia. He entered the United States on or about December 8, 2021, at Otay Mesa Port of Entry.

55. At entry, DHS processed Petitioner and issued a Notice to Appear ("NTA")

dated December 14, 2021, commencing removal proceedings pursuant to INA § 240 (8 U.S.C. § 1229a). *See* Exhibit B, NTA Vasily. The NTA charged Petitioner as a noncitizen who was not in possession of a valid unexpired immigrant visa, reentry permit, or border crossing card as required by the Immigration and Nationality Act, pursuant to 8 U.S.C. § 1182(a)(7)(A)(i)(I) of the Act. It also ordered him to appear before the Immigration Court at 26 Federal Plaza, 12th Floor, Room 1237, New York, NY 10278 on a date and time to be set. *See* Exhibit B, NTA Vasily.

56. At entry in 2021, Petitioner was detained for several days. On December 14, 2021, DHS granted Petitioner a humanitarian parole pursuant to INA § 212(d)(5), allowing him to enter the United States. Inherent in its decision, DHS conducted a flight and danger assessment. Exhibit C, Parole, Vasily.

57. On June 9, 2022, Petitioner timely filed an Application for Asylum, Withholding of Removal, and Protection under the Convention Against Torture based on political opinion, race, and nationality. *See* Exhibit D, I-589, Vasily.

58. On November 13, 2025, four years after his entry, DHS arrested Petitioner and detained him at the Folkston D. Ray ICE Processing Center, located at 3262 Highway 252 East, Folkston, Georgia 31537, where he remains detained. *See* Exhibit A, ICE Locator, Vasily.

59. ICE issued a notice of action, Form I-247-A, determining that despite the

relevant charge occurring on October 8, 2024, that Petitioner is subject to the detainer provision of the Laken Riley Act and is required to be effectively and expeditiously taken into custody by DHS pursuant to 8 U S.C. § 1226 (c)(3)." DHS also classified him as threat to national security, border security, or public safety. *See* Exhibits F and G, ICE Notice of Action and Arrest Warrant.

60. At entry, DHS paroled Petitioner into the country pursuant to 212 (d)(5), making a flight and danger determination. He applied for asylum and was granted a work authorization, valid until September 14, 2030. Exhibit E, Employment Authorization Document, Vasily.

61. Petitioner built a life in the United States, with his wife, and three children, one of whom was born here. At the time of his re-arrest in November of 2025, he had been living in the United States for close to five years.

62. In *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025), the Board of Immigration Appeals stripped immigration judges of jurisdiction to conduct custody redeterminations for noncitizens who entered without inspection, as in Petitioner's case, leaving habeas corpus as his only avenue for relief. To the extent *Yajure-Hurtado* eliminates all review mechanisms, it violates due process under *Zadvydas v. Davis*, 533 U.S. 677 (2001).

63. Petitioner is not an "arriving alien" under 8 U.S.C. § 1225(b)(2)(A), and his

detention without bond remains unlawful.

64. ICE detained Petitioner without bond, asserting that he is subject to mandatory detention under 8 U.S.C. § 1225(b)(2) based on the Board of Immigration Appeals' decision in *Matter of Yajure Hurtado*, notwithstanding Petitioner's placement in standard removal proceedings under § 1229a, and his 2025 arrest in the interior, which traditionally bring his detention under § 1226(a).

65. In addition, DHS detained the Petitioner under the Laken Riley Act for a charge that occurred one year prior to the enactment of the law in 2025, violating binding precedents of the Supreme Court regarding retroactivity of the laws. See *Landgraf v. USI*, and *Vartelas v. Holder*.

66. Even if the Court were to find that the Laken Riley Act could apply to Petitioner and that § 1225(b)(2) governs his detention, Petitioner's prolonged detention without any meaningful opportunity for a bond hearing violates the Fifth Amendment Due Process Clause.

67. The Supreme Court has long recognized that "[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

68. In *Zadvydas*, the Court held that the government's authority to detain removable aliens is cabined by constitutional limitations, and indefinite detention raises serious constitutional concerns. While the Court in *Department of Homeland Security v. Thuraissigiam*, 140 S. Ct. 1959 (2020), and Johnson v. Arteaga-Martinez, 596 U.S. 573 (2022), declined to extend mandatory bond hearings to all § 1225 and § 1231 detainees, those decisions emphasized that "as-applied constitutional challenges remain available to address 'exceptional' cases".

69. Petitioner's case presents such exceptional circumstances. He has been detained for almost three months without any opportunity to demonstrate that he poses neither a flight risk nor a danger to the community. This prolonged detention without hearing violates fundamental fairness and due process.

70. Without intervention from this Court, Petitioner faces the prospect of indefinite detention lasting months or even years, separated from his family and community.

WRIT OF HABEAS CORPUS

71. The Constitution guarantees the right of writ of habeas corpus to every individual detained within the United States, including immigration-related detention. *See Zadvydas v. Davis*, 533 U.S. 677 (2001), at 687. A writ of habeas corpus must be granted if the person is in custody in violation of the Constitution or federal law. *See* 28 U.S.C. §

2241(c)(3).

72. The Court must grant the petition for writ of habeas corpus or issue an Order to Show Cause (OSC) to the Respondents forthwith, unless the petitioner is not entitled to relief. *See* 28 U.S.C. § 2243. If an OSC is issued, the Court must require Respondents to file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

73. Petitioner is "in custody" for the purpose of 28 U.S.C. § 2241 because Petitioner is arrested and detained by Respondents.

74. Immigration detention is a form of civil confinement that "constitutes a significant deprivation of liberty that requires due process protection." *Addington v. Texas*, 441 U.S. 418, 425 (1979). Noncitizens in immigration proceedings are entitled to Due Process under the Fifth Amendment of the U.S. Constitution. *See Reno v. Flores*, 507 U.S. 292 (1993). Immigration detention should not be used as a punishment and should only be used when, under an individualized determination, a noncitizen is a flight risk because they are unlikely to appear for immigration court or a danger to the community. *See Zadvydas*, 533 U.S. at 690.

75. Respondents' position that Petitioner is subject to mandatory detention by recategorizing him as an arriving alien or an applicant for admission deprives him of the

opportunity to challenge his detention through any other avenue outside of habeas corpus proceedings.

a. Violation of Fifth Amendment Right to Due Process

76. The Due Process Clause of the Fifth Amendment to the U.S. Constitution prohibits the federal government from depriving any person of "life, liberty, or property, without due process of law." U.S. Const. Amend. V. Due process protects "all 'persons' within the United States, including [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693; *accord Flores*, 507 U.S. 292. Due process requires that government action be rational and non-arbitrary. See *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018).

77. Petitioner's detention violates his substantial due process rights under the Fifth Amendment of the U.S. Constitution, which guarantees that no person shall be deprived of liberty without due process of law. Arbitrary civil detention is categorically unconstitutional. The Due Process Clause requires that any deprivation of Petitioner's liberty serve, at minimum, a legitimate purpose. *See Flores*, 507 U.S. at 302 (explaining that infringements on fundamental liberty rights violate due process unless they are "narrowly tailored to serve a compelling state interest").

78. Petitioner's detention violates his procedural and substantive due process rights under the three-part test set forth in *Matthews b. Eldridge*, 424 U.S. 319 (1976), at

335, to wit:

(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 probably value, if any, of additional procedural safeguards; and

(3) the Government's interest, including the fiscal and administrative burdens that the additional or substitute procedures would entail.

79. First, Petitioner's liberty interest is substantial. His presence in the United States for almost five years with his family, his pending asylum application, and a U.S. citizen child demonstrate a protected interest in remaining free from detention. *See Zadvydas*, 533 U.S. at 690.

80. Second, the risk of erroneous deprivation is high due to DHS's failure to provide notice, a hearing, or an individualized determination of flight risk or danger before re-detaining him.

81. Third, the government's interest in detaining Petitioner is minimal compared to his substantial liberty interest. *See Jennings v. Rodriguez*, 583 U.S. 281 (2018) (detention must serve a legitimate purpose). Alternatives, such as electronic monitoring, could address any enforcement concerns at minimal cost, thereby rendering detention unnecessary.

82. Here, Respondents have chosen to revoke Petitioner's release in an arbitrary manner and not based on a rational and individualized determination of whether he is a safety or flight risk, in violation of due process and the principle of non-retroactivity of laws.

83. Even if classified as an arriving alien, the petitioner is entitled to due process under *Clark v. Martinez*, 543 U.S. 371, 380-81 (2005) (extending due process protections to all noncitizens).

84. 8 U.S.C. § 1226(b) and 8 C.F.R. § 236.1(c)(9) grant ICE discretion to revoke release. Petitioner is subject to § 1226(a), not 1226(b). However, even were Petitioner subject to 1226(b), the discretion it grants to revoke release is not unfettered and must comport with due process. *See Zadvydas*, 533 U.S. at 690.

85. Under the APA, the Court must set aside DHS's decision to re-detain Petitioner as "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). An action is arbitrary if it fails to consider relevant factors or lacks a rational connection to the facts. *See Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 43 (1983).

CLAIMS FOR RELIEF

FIRST COUNT

Violation of the INA

86. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

87. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who previously entered the country, have been residing in the United States, and were apprehended in the interior. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(l), § 1226(c), or § 1231. DHS has treated Petitioner as detained pursuant to § 1226(a).

88. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates the INA.

89. The application of § 1226(c)(1)(E) created by the Laken Riley Act retroactively is not permissible under the Supreme Court decision in *Landfgraf v. USI Film Products*, 511 U.S. 244 (1994), reaffirmed by *Vartelas v. Holder*, 566 U.S. 257 (2012). Applying the Laken Riley Act retroactively would also violate due process because it imposes new burdens based on past conduct.

SECOND COUNT

Violation of Due Process

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

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

92. Petitioner has a fundamental interest in liberty and being free from official restraint.

93. The government's detention of Petitioner without a bond redetermination hearing to determine whether he is a flight risk or danger to others violates his right to due process.

PRAYER FOR RELIEF

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

a. Assume jurisdiction over this matter;

b. Order that Petitioner shall not be transferred outside the Southern

District of Georgia while this habeas petition is pending;

c. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days, per 28 U.S.C. § 2243;

d. Declare that Petitioner's re-detention without notice, a hearing, or individualized findings violates the Fifth Amendment and 5 U.S.C. § 706(2)(A);

e. Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner or, in the alternative, provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) whereby the government bears the burden of proving flight risk and danger by clear and convincing evidence;

f. Declare that Petitioner's detention is unlawful;

g. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and

h. Grant any other and further relief that this Court deems just and proper.

DATED this 6th of February, 2026.

Respectfully submitted,

s/Renata C. Lillywhite

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Attorney for Petitioner

VERIFICATION OF COUNSEL

I, Renata C. Lillywhite, hereby certify that I am familiar with the case of the named Petitioner and that the facts as stated above are true and correct to the best of my knowledge and belief.
s/Renata C. Lillywhite

CERTIFICATE OF SERVICE

This is to certify that on February 8, 2026, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a notice of electronic filing to counsel of record. In addition, the document was emailed to the U.S. Attorney's Office.
s/Renata C. Lillywhite