UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

IGNACIO HERNANDEZ HERRERA, ([redacted]),	
Petitioner,	
v.	
	Case No. 1:26-cv-518
PAMELA BONDI, U.S. Attorney General; KRISTI NOEM, Secretary, U.S. Department of Homeland Security; and JUAN BALTASAR, Warden, Denver Contract Detention Facility.	
Respondents.	

PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR EMERGENCY INJUNCTIVE RELIEF

The Petitioner, IGNACIO HERNANDEZ HERRERA, by and through his own and proper person and through his attorneys, ANDREA OCHOA, of the LAW OFFICES OF KRIEZELMAN BURTON & ASSOCIATES, LLC, petition this Honorable Court to issue a Writ of Habeas Corpus to review his unlawful detention during his pending removal proceedings, in violation of his constitutional and statutory rights.

Introduction

1. Petitioner is presently being detained by U.S. Immigration and Customs Enforcement ("ICE") at the Denver Contract Detention Facility in Aurora, Colorado.
2. Petitioner is a native and citizen of Mexico. He has been present in the United States since 1989, approximately 37 years ago.
3. Petitioner has three U.S. children, one currently serving in the U.S. Military.
4. Petitioner's detention is a substantial deprivation and burden that puts Petitioner and his family at risk without his support.

5. Petitioner was detained by ICE on January 24, 2026.
6. His continued detention is an unlawful violation of due process and is in violation of the provisions of the Immigration & Nationality Act.
7. Petitioner respectfully asks this Court to issue a temporary restraining order directing Petitioner's immediate release and enjoining Respondent's continued detention of Petitioner to ensure his due process rights and his ability to care for his U.S. citizen children, who has needs that require Petitioner's presence and support.
8. In the alternative, Petitioner respectfully requests the Court order Respondents to show cause why this Petition should not be granted within three days. See 28 U.S.C. § 2243.

Jurisdiction and Venue

9. The action arises under the Constitution of the United States, the Immigration and Nationality Act of 1952, as amended ("INA"), 8 U.S.C. § 1101 et seq., and the Administrative Procedure Act ("APA"), 5 U.S.C. § 701 et seq.
10. This Court has habeas corpus jurisdiction pursuant to 28 U.S.C. § 2241, and Article I, section 9, clause 2 of the United States Constitution (the "Suspension Clause"), as Petitioner is presently subject to immediate detention and custody under color of authority of the United States government, and said custody is in violation of the Constitution, law or treaties of the United States.
11. This action is brought to compel the Respondents, officers of the United States, to accord Petitioner the due process of law to which he is entitled under the Fifth and Fourteenth Amendments of the United States Constitution.
12. 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.

13. Venue is proper in the District of Colorado because Petitioner is presently detained by Respondents at the Denver Contract Detention Facility in Aurora – which is located within the District of Colorado. 28 U.S.C. § 1391(b), (e)(1).

Parties

14. Petitioner IGNACIO HERNANDEZ HERRERA is a native and citizen of Mexico. Petitioner is presently detained at the Denver Contract Detention Facility located in Aurora, Colorado.

15. Respondent PAMELA BONDI is being sued in her official capacity only, as Attorney General of the United States.

16. Respondent KRISTI NOEM is being sued in her official capacity only, as the Secretary for the Department of Homeland Security. As such, she is charged with all matters concerning the detention and removal of noncitizens in the United States.

17. Respondent JUAN BALTAZAR, Warden for the Denver Contract Detention Facility, is being sued in his official capacity only. As the Warden of the Denver Contract Detention Facility he is the custodian of the jail and all individuals detained therein, where Petitioner is presently being detained. He is, therefore, Petitioner's immediate custodian.

Custody

18. Petitioner IGNACIO HERNANDEZ HERRERA is being unlawfully detained by ICE and he is not likely to be removed in the reasonably foreseeable future.

Factual and Procedural Background

19. Petitioner IGNACIO HERNANDEZ HERRERA is a native and citizen of Mexico. He has been present in the United States for more than 35 years. He lives with and is the primary financial support for his family in Florida.

20. Petitioner entered the United States on or about 1989, without inspection and has remained here since that time. He did not encounter any officials at or near the time of his entry.

21. He has three United States citizen children, one who is serving in the military.

22. Petitioner is prima facie eligible for military parole in place pursuant to his son's active service in the U.S. military.

23. On September 6, 2025, the Board of Immigration Appeals ("the Board") released *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), taking the novel position that all noncitizens present in the United States who entered the country without a lawful entry – which would include Petitioner – must be mandatorily detained pursuant to 8 U.S.C. section 1225(b).

24. On January 24, 2026, immigration officials detained Petitioner.

25. Petitioner remains detained. He remains in detention and separated from his family and community. He and his family are experiencing significant and deep emotional and mental trauma from this separation from one another. His children are struggling without him around and the family is struggling financially in the absence of Petitioner.

26. Petitioner's continued detention separates him from his family, prohibits him from being able to financially provide for them, and inhibits his removal defense in many ways, including by making it difficult to communicate with witnesses, gather evidence,

and afford legal representation, among other related harm.

Legal Framework

Due Process Clause

27. "It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings." *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

28. In the immigration context, the Supreme Court only recognizes two purposes for civil detention: preventing flight and mitigating the risks of danger to the community. *Zadvydas*, 533 U.S. at 690; *Demore*, 538 U.S. at 528. A noncitizen may only be detained based on these two justifications if they are otherwise statutorily eligible for bond. *Zadvydas*, 533 U.S. at 690.

29. "The fundamental requirement of due process is the opportunity be heard at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). In this case, to determine the due process to be afforded to Petitioner, the Court should consider (1) the private interest affected by the government action; (2) the risk that current procedures will cause an erroneous deprivation of that private interest, and the extent to which that risk could be reduced by additional safeguards; and (3) the government's interest in maintaining the current procedures, including the governmental function involved and the fiscal and administrative burdens that the substitute procedural requirement would entail. *Id.* at 335; *see also Hernandez v.*

Maydak, et al, 2026 WL 120670 (E.D. Ky Jan. 16, 2026).

Detention Provisions under the Immigration and Nationality Act

30. The Immigration and Nationality Act is codified at Title 8 of the United States Code, Section 1221 *et seq.*, and controls the United States Government's authority to detain noncitizens during their removal proceedings.

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

    1) **Discretionary Detention. 8 U.S.C. § 1226(a)** generally allows for the detention of noncitizens who are in regular, non-expedited removal proceedings; however, it permits those noncitizens who are not subject to mandatory detention to be released on bond or on their own recognizance.

    2) **Mandatory Detention of "Criminal" Noncitizens. 8 U.S.C. § 1226(c)** generally requires the mandatory detention of noncitizens who are removable because of certain criminal or terrorist-related activity after they have been released from criminal incarceration.

    3) **Mandatory Detention of "Applicants for Admission." 8 U.S.C. § 1225(b)** generally requires detention for certain noncitizen applicants for admission, such as those noncitizens arriving in the U.S. at a port of entry or other noncitizens who have not been admitted or paroled into the U.S. and are apprehended at the border.

    4) **Detention Following Completion of Removal Proceedings. 8 U.S.C. § 1231(a)** generally requires the detention of certain noncitizens who are subject to a final removal order during the 90-day period after the completion of removal proceedings and permits the detention of certain noncitizens beyond that period. 8 U.S.C. § 1231(a)(2), (6).

32. This case concerns the detention provisions at §§ 1226(a) and 1225(b). Both detention provisions, §§ 1226(a) and 1225(b), were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") of 1996, Pub. L. No. 104—208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585.[1]

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

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

34. For nearly thirty years, the practice of ICE, which operates under DHS, was that most individual noncitizens that were apprehended in the interior of the United States after they had been living in the U.S. for more than two years (as opposed to "arriving" at a point of entry, border crossing, or being apprehended near the border and soon after entering without inspection) received a bond hearing. *Rocha Rosado v. Figueroa*, 2025 WL 2337099, at *9 (D. Arizona August 11, 2025); *see Loper Bright Enter. v. Raimondo*, 603 U.S. 369, 386 (2024) ("[T]he longstanding practice of the government—like any other interpretive aid—can inform [a court's] determination of what the law is."). If determined to not be a danger to the community or a flight risk and, as a result, granted a change in custody status, the individuals were released from detention either on their own recognizance or after paying the bond amount set by the

immigration judge in full. 8 U.S.C. § 1226(a)(2)(A).

35. The legislative history behind § 1226 also demonstrates that it governs noncitizens, like Petitioner, who were deemed inadmissible upon inspection at the border, released into the United States at the border after being placed into removal proceedings, and were present in the United States for a number of years prior to being taken into detention. Before passage of the Immigration Reform and Immigrant Responsibility Act ("IRIRA"), the predecessor statute to § 1226(a) governed deportation proceedings for all noncitizens arrested within the United States, and like § 1226(a), included a provision allowing for discretionary release on bond. *See* 8 U.S.C. § 1252(a)(1) (1994).[2] After passing the IIRIRA, Congress declared the new § 1226(a) "restates the current provisions in [the predecessor statute] regarding the authority of the Attorney General to arrest, detain, and release on bond" a noncitizen "who is not lawfully in the United States." H.R. Rep. No. 104-469, pt. 1, at 229. *See also* H.R. Rep. No. 104-828, at 210. Because noncitizens like Petitioner were entitled to discretionary detention under § 1226(a)'s predecessor statute, and Congress declared the statute's scope unchanged by IIRIRA, the Court should interpret § 1226 to allow for a discretionary release on bond for noncitizens in a situation similar to Petitioner.

36. Yet, the Board reversed course and adopted a policy of attempting to treat all individual noncitizens that were not previously admitted to the U.S. that are contacted in the interior of the U.S. at any time after their entry as "arriving" and ineligible for bond regardless of the particularities of their case. *Matter of Yajure Hurtado*, 29 I&N Dec.

[2] See 8 U.S.C. § 1252(a)(1) (1994) ("Pending a determination of deportability...any [noncitizen]...may, upon warrant of the Attorney General, be arrested and taken into custody."); *Hose v. Immigration & Naturalization Serv.*, 180 F.3d 992, 994 (9th Cir. 1999)(noting a "deportation hearing" was the "usual means" of proceeding against an alien physically in the United States).

216 (BIA 2025).

37. As a result, the Board has demanded that judges now ignore particularities that have been historically relevant in determining whether a noncitizen should remain or custody or be released—such as: when, why, or how they entered the U.S.; whether they have criminal convictions; whether they present a danger to the community or flight risk; whether they have serious medical conditions requiring ongoing care; whether U.S. citizen family members dependent upon them to provide necessary care; or, whether the noncitizen's detention is in the community's best interest.

38. The idea that a different detention scheme would apply to non-citizens 'already in the country,' as compared to those 'seeking admission into the country,' is in agreement with the core logic of our immigration system." *Martinez v. Hyde*, CV 25-11613-BEM, 2025 WL 2084238 (D. Mass. July 24, 2025) (citing *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018)); *see also Lopez Benitez v. Francis,* No. 25 CIV. 5937 (DEH), 2025 WL 2267803 (S.D.N.Y. Aug. 8, 2025) ("the Court need not reach the outer limits of the scope of the phrase 'seeking admission' in § 1225(b)—it is sufficient here to conclude that it does not reach someone who has been residing in this country for more than two years, and that as someone 'already in the country,' *Jennings*, 583 U.S. at 289, [Petitioner] may be subject to detention ***only*** as a matter of discretion under § 1226(a)") (emphasis added).

39. The government's erroneous interpretation of the INA defies the plain text of 8 U.S.C. § 1226. The government's assertion that Petitioner is detained under § 1225 is meritless. For decades, § 1225 has applied only to noncitizens "seeking admission into the country"—i.e., new arrivals. *Jennings*, 583 U.S. at 289. This contrasts with § 1226,

which applies to noncitizens "already in the country." *Id.* at 289. *See also*, *Zheng v. Daley, et al*, 2026 WL 281129, *6 (E.D. Ky. Feb. 3, 2026).

40. The government's position and the Board's recent decision contravenes the plain language of the INA and its regulations and has been consistently rejected by federal courts across the nation, including this one. *See Castañon-Nava v. U.S. Dep't of Homeland Security*, 161 F.4th 1048, 1060-63 (7th Cir. 2025); *Hernandez v. Maydak, et al*, 2026 WL 120670 (E.D. Ky Jan. 16, 2026); *Beltran Barrera v. Tindall, et al*, 3:35-cv-541-RGJ, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Hyppolite v. Noem, et al*, 25-CV-4304 (NRM), 2025 WL 2829511 (E.D. New York Oct. 6, 2025); *Sampiao v. Hyde, et al*, 1:25-cv-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Reynosa Jacinto v. Trump, et al,* 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 (D. Neb. August 19, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Aguilar Maldonado v. Olson, et al*, No. 25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. August 18, 2025); *Mohammed H. v. Trump*, No. 25-cv-1576 (JWB/DTS), 2025 WL 1334847 (D. Minn. May 5, 2025); *Rocha Rosado*, 2025 WL 2337099; *Martinez*, 2025 WL 2084238; *Gomes v. Hyde*, No. 1:25-cv-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Rodriguez v. Bostock*, No. 3:25-cv-05240-TMC, 2025 WL 1193850 (W.D. Wash. Apr. 24, 2025). *See also* Inspection and Expedited Removal of Aliens, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) (explaining 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").

41. In fact, an overwhelming number of "Article III court[s] that [have] examined how the

relevant provisions of the INA apply … [have] reached the exact same answer," uniformly finding that detention is subject to the provisions of § 1226(a), not the "mandatory" provisions of § 1225(b) as Respondents claim. *Hyppolite*, 2025 WL 2829511 at *7; *see also*, *Hernandez*, 2026 WL 120670, at *5 (collecting cases). *See* Appendix.

42. Courts do not defer to any agency interpretation of law just because it is ambiguous. *Lopez Bright Enter. v. Raimondo*, 603 U.S. 369, 412-413 (2024).

43. This Respondents' new interpretation is inconsistent with the plain language of the INA. First, the government disregards a key phrase in § 1225, rendering it superfluous. *Castañon-Nava v. U.S. Dep't of Homeland Security*, 161 F.4th 1048, 1061 (7th Cir. 2025). "[I]n the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien ***seeking admission*** is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a[.]" 8 U.S.C. § 1225(b)(2)(A) (emphasis added). In other words, mandatory detention applies when "the individual is: (1) an 'applicant for admission'; (2) 'seeking admission'; and (3) 'not clearly and beyond a doubt entitled to be admitted.'" *Martinez*, 2025 WL 2084238, at *2.

44. The "seeking admission" language "necessarily implies some sort of present tense action." *Martinez*, 2025 WL 2084238, at *6; *see also Matter of M- D-C-V-*, 28 I. & N. Dec. 18, 23 (B.I.A. 2020) ("The use of the present progressive tense 'arriving,' rather than the past tense 'arrived,' implies some temporal or geographic limit . . . ."); *U.S. v. Wilson*, 503 U.S. 329, 333 (1992) ("Congress' use of verb tense is significant in construing statutes.") Furthermore, seeking lawful status or relief from removal is not

the same as "seeking admission." *Zheng v. Daley, et al*, 2026 WL 281129, *5 (E.D. Ky. Feb. 3, 2026), *citing Sanchez v. Mayorkas*, 593 U.S. 409, 415 (2021). A noncitizen present in the United States may seek lawful status without simultaneously seeking admission. *Id.*

45. In other words, the plain language of § 1225 applies to immigrants currently seeking admission into the United States at the nation's border or another point of entry. It does not apply to noncitizens "already present in the United States"—only § 1226 applies in those cases. *See Jennings*, 583 U.S. at 303; *Castañon-Nava*, 161 F.4th at 161; *see also Romero v. Hyde*, 25-11631-BEM, 2025 WL 2403827 at *9-10 (D. Mass Aug. 19, 2025).

46. When interpreting a statute, "every clause and word . . . should have meaning." *United States ex rel. Polansky, M.D. v. Exec. Health Res., Inc.*, 599 U.S. 419, 432 (2023) (internal quotation marks and citation omitted), and this includes the title. *Yates v. United States*, 574 U.S. 528, 552 (Alito, J., concurring in judgment). And "the words of the statute must be read in their context and with a view to their place in the overall statutory scheme." *Gundy v. United States*, 588 U.S. 128, 141 (2019) (quotation omitted). The added word of "arriving" in the title "indicates that the statute governs 'arriving noncitizens, not those present already." *Beltran Barrera*, 2025 WL 2690565, at *6; *Pizarro Reyes*, 2025 WL 2609425, at *5. This is further supported by the text, which focuses on noncitizens who arrive as "crewmen" and "stowaways." *Id.* The government's position requires the Court to ignore critical provisions of the INA.

47. The government's interpretation also renders portions of the newly enacted provisions of the INA superfluous. "When Congress amends legislation, courts must presume it

intends its amendment to have real and substantial effect." *Van Buren v. United States*, 593 U.S. 374, 393 (2021). Congress passed the Laken Riley Act (the "Act") in January 2025. The Act amended several provisions of the INA, including §§ 1225 and 1226. Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025). Relevant here, the Act added a new category of noncitizens subject to mandatory detention under § 1226(c)—those already present in the United States who have also been arrested, charged with, or convicted of certain crimes. 8 U.S.C. § 1226(c)(1)(E); 8 U.S.C. § 1182(a)(6)(A). Of course, under the government's position, these individuals are already subject to mandatory detention under § 1225—rendering the amendment redundant. *See Rodriguez*, 2025 WL 1193850, at *12; *see also Beltran Barrera*, 2025 WL 2690565, at *7; *Hernandez*, 2026 WL 120670, at *6. Likewise, mandatory-detention exceptions under § 1226(c) are meaningful only if there is a default of discretionary detention—and there is, under § 1226(a).

48. Additionally, "[w]hen Congress adopts a new law against the backdrop of a longstanding administrative construction, the court generally presumes that the new provision works in harmony with what came before." *Monsalvo v. Bondi*, 604 U.S. __, 145 S. Ct. 1232, 1242 (2025). Congress adopted the Act against the backdrop of decades of agency practice applying § 1226(a) to immigrants like Petitioner, who are present in the United States but have not been admitted or paroled. *Rodriguez*, 2025 WL 1193850, at *15; *Martinez*, 2025 WL 2084238, at *4; 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) ("Despite being applicants for admission, aliens who are present without having been admitted or paroled . . . will be eligible for bond and bond redetermination.").

49. Section 1226(a) applies by default to all persons "pending a decision on whether the

[noncitizen] is to be removed from the United States." Removal hearings for noncitizens under 1226(a) are held under § 1229a, which "decid[e] the inadmissibility or deportability of a[] [noncitizen]." By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States.

50. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to Petitioner.

51. Given the Board's precent decision in *Yajure Hurtado*, seeking bond before the Immigration Judge would be fruitless. Petitioner has no way to seek relief from the judge's and Board's decision but through a habeas petition in the federal courts.

Petitioner's detention violates due process

52. In determining whether due process has been violated, the Court should weigh: (1) the private interest affected by the government action; (2) the risk that current procedures will cause an erroneous deprivation of the private interest, and the extent to which that risk could be reduced by additional safeguards; and (3) the government's interest in maintaining the current procedures, including the governmental function involved and the fiscal and administrative burdens that the substitute procedural requirement would entail. *Mathews*, 424 U.S. 319 at 335.

53. As to the first *Mathews* factor, the private interest affected by the government action, "Petitioner's liberty interest in remaining free from governmental restraint is of the highest constitutional import." *Zavala*, 310 F.Supp.2d at 1076; *see also Ashley*, 288 F.Supp.2d at 670-71 (same) (quoting *St. John v. McElroy*, 917 F.Supp. 243, 250 (S.D.N.Y. 1996)). Petitioner has been detained for over month, preventing him from seeing children and his wife who are struggling without him, from going to work, and

from participating in his community and in his removal defense.

54. As to the second *Mathews* factor, there was a complete lack of any pre- or post-deprivation notice and opportunity to be heard before an Immigration Judge, giving rise to an extraordinarily high risk of erroneous deprivation. *Rodriguez-Acurio,* 2025 WL 3314420 (E.D.N.Y. Nov. 28, 2025); *Zheng*, 2026 WL 291129, *8. There is no allegation that Petitioner is a flight risk or a danger to the community.

55. As to the third *Mathews* factor, the government's interest in maintaining the "current" procedure is minimal here. Petitioner's mandatory detention pursuant to 1225(b) violates the law, and there can be no interest in a continuing violation of the law. In addition, the government is still seeking Petitioner's removal from the United States, and those proceedings are ongoing. Petitioner's release will not affect those ongoing proceedings. In addition, there are existing statutory and regulatory safeguards already in place for those detained pursuant to section 1226. *Zheng*, 2026 WL 291129, *8

56. All *Mathews* factors weigh in favor of the Petitioner.

Claims for Relief

FIRST CAUSE OF ACTION

Violation of the Immigration and Nationality Act

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

58. Petitioner was detained pursuant to authority contained in section 1226. He is not subject mandatory detention pursuant to section 1225(b)(2).

59. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of

inadmissibility. Mandatory detention does not apply to those who previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a) and are eligible for release on bond, unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

60. The Board wrongfully decided *Matter of Yajure Hurtado*, finding all noncitizens, such as Petitioner, are subject to mandatory detention under § 1225(b)(2), and this Court is not bound by the decision.

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

SECOND CAUSE OF ACTION

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

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

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

64. The government's detention of Petitioner is unjustified. Respondents have not demonstrated that Petitioner needs to be detained. *See Zadvydas*, 533 U.S. at 690 (finding immigration detention must further the twin goals of (1) ensuring the noncitizen's appearance during removal proceedings and (2) preventing danger to the community). There is no finding that Petitioner cannot be safely released back to his community and family.

65. The *Matter of Yajure Hurtado* decision wrongly interprets the Immigration and Nationality Act.

66. This Court is not required to give deference to *Matter of Yajure Hurtado*. In *Loper Bright*, the Supreme Court was clear that "[c]ourts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority," and indeed "may not defer to an agency interpretation of the law simply because a statute is ambiguous." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412 (2024).

67. Rather, this Court can simply look to the Supreme Court's own words in *Jennings* that held that for decades, § 1225 has applied only to noncitizens "seeking admission into the country"—i.e., new arrivals, and that this contrasts with § 1226, which applies to noncitizens "already in the country." *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018). By keeping Petitioner detained today, his detention violates his due process rights. *Hernandez v. Maydak, et al*, 2026 WL 120670 (E.D. Ky Jan. 16, 2026).

68. Petitioner therefore requests immediate release. The proper remedy for unlawful detention is release. *Munaf v. Geren*, 553 U.S. 674, 693 (2008). A bond determination by a DHS officer or an immigration judge would not remedy the core constitutional violation at issue here. "[Petitioner's] detention was unlawful from its inception because ICE detained [him] under the wrong statute and without any notice or opportunity to be heard, much less the procedures required under section 1226(a). In this situation a post-deprivation bond hearing before a DHS officer or even an immigration judge would provide no genuine opportunity to relief because the detention without adequate pre-deprivation procedures has already been carried out." *Rodriguez-Acuro v. Almovodar*, 2025 WL 3314420 (E.D.N.Y. Nov. 28, 2025); *Barco*

Mercado v. Francis, --- F.Supp.3d ---, 2025 WL 3295903 (S.D.N.Y. Nov. 26, 2025); *AMM v. Thompson*, 2025 WL 3296316 (S.D. Tex. Nov. 18, 2025); *Lopez Benitez v. Francis*, 795 F.Supp.3d 475, 484 (S.D.N.Y. 2025). Furthermore, the agency has not alleged any circumstances that have arisen to change that analysis, other than a new interpretation of 1225.

69. If this court finds immediate release inappropriate, Petitioner requests that this court order bond hearing within five days, where the burden is on the Government to prove by clear and convincing evidence that the detainee poses a danger or flight risk. *Ochoa Ochoa v. Noem*, 2025 WL 2938779 (N.D. Ill. Oct. 16, 2025); *Lopez-Alvarez v. Ripa*, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025) (ordering a bond hearing within seven day or release); *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025) (same); *Roman v. Noem*, 2025 WL 2710211 (D. Nev. 23, 2025).

Prayer for Relief

WHEREFORE, Petitioner respectfully request that this Honorable Court:

A. Accept jurisdiction over this action;

B. Order the immediate release of Petitioner pending these proceedings;

C. Order Respondents not to transfer Petitioner out of the District of Colorado during the pendency of these proceedings to preserve jurisdiction and access to counsel;

D. Declare that Respondents' actions to detain Petitioner violate the Due Process Clause of the Fifth Amendment and violate the Immigration and Nationality Act;

E. Issue a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 and order Respondents to immediately release Petitioner from custody, or, in the alternative, order Respondents to show cause why this Petition should not be granted within three days;

F. Award reasonable attorneys' fees and costs for this action; and

G. Grant such further relief as the Court deems just and proper.

Dated: February 10, 2026

Respectfully Submitted,

/s/ Andrea Ochoa

Andrea Ochoa, Esq.
KRIEZELMAN BURTON & ASSOCIATES, LLC
200 West Adams Street, Suite 2211
Chicago, Illinois 60606
(312) 332-2550, aochoa@krilaw.com
Attorney No. IL-6330234
Attorney for Petitioner