UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION

Hamilton Alexander Estrada Moscoso,
A-Number Unknown/Unassigned

Petitioner,

v.

Matthew Elliston, in his official capacity as Acting Field Office Director of Baltimore, Maryland Field Office of ENFORCEMENT AND REMOVAL OPERATIONS, IMMIGRATION AND CUSTOMS ENFORCEMENT;

Kristi Noem, in her official capacity as Secretary of the U.S. Department of Homeland Security;

Todd Lyons in his official capacity as Senior Official Performing the Duties of the Director of IMMIGRATION AND CUSTOMS ENFORCEMENT

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

Daren K. Margolin, in his official capacity as Director, EXECUTIVE OFFICE FOR IMMIGRATION REVIEW.

Respondents.

Case No.: 1:26-CV-604

PETITION FOR WRIT OF HABEAS CORPUS

PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. §2241

INTRODUCTION

1. Petitioner, Hamilton Alexander Estrada Moscoso ("Petitioner"), is a native and citizen on El Salvador who entered the United States in 2003 and who has resided in the United States continuously since that time. Petitioner has no adverse criminal history in the United States or elsewhere in the world. On February 09, 2026, while on his way to work, immigration agents encountered him in the state of Maryland at an immigration checkpoint, detained him, and placed him in immigration custody pending completion of removal proceedings.

Although he has no criminal history, and despite his arrival in the United States in 2003, the Department of Homeland Security ("DHS") and the Executive Office for Immigration Review ("EOIR") have concluded that he is subject to mandatory immigration detention because he should be deemed to be "seeking admission" to the United States.

2. Petitioner is in the physical custody of Respondents at the Baltimore ERO Holding Room in Baltimore, Maryland. He now faces unlawful detention because the DHS and EOIR take the position that Petitioner is subject to mandatory detention.

3. Petitioner is charged with, inter alia, having entered the United States without admission or inspection and having entered without the not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality as required under the regulations issued by the Attorney General under section 211 (a) of the Act. *See* 8 U.S.C. § 1182(a)(6)(A)(i), *see also* 8 U.S.C. § 1182(a)(7)(A)(i)(I).

4. Based on this allegation in Petitioner's removal proceedings, DHS' position is that he is subject to mandatory detention, consistent with a new DHS policy issued on July 8, 2025, instructing all Immigration and Customs Enforcement (ICE) employees to consider anyone inadmissible under § 1182(a)(6)(A)(i)—i.e., those who entered the United States without admission or inspection—to be subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.

5. Similarly, on September 5, 2025, the Board of Immigration Appeals (BIA or Board) issued a precedent decision, binding on all immigration judges, holding that an immigration judge has no authority to consider bond requests for any person who entered the United States

without admission. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The Board determined that such individuals are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.

6. Petitioner's detention on this basis violates the plain language of the Immigration and Nationality Act. Section 1225(b)(2)(A) does not apply to individuals like Petitioner who previously entered and are now residing in the United States. Instead, such individuals are subject to a different statute, § 1226(a), that allows for release on conditional parole or bond. That statute expressly applies to people who, like Petitioner, are charged as inadmissible for having entered the United States without inspection.

7. Respondents' new legal interpretation is plainly contrary to the statutory framework and contrary to decades of agency practice applying § 1226(a) to people like Petitioner.

8. DHS and EOIR's position in this case is pursuant to a new policy shift, changing the government's decades-long practice. Respondents' insistence that Petitioner is subject to mandatory detention is not only a significant shift from past practice but is contrary to the plain language of the INA and is also in violation of Petitioner's Constitutional rights.

9. This Court should therefore intervene and grant Petitioner's petition for writs of habeas corpus and either release Petitioner or order EOIR to conduct a bond hearing under 8 U.S.C. § 1226(a) at which DHS bears the burden of proof that continued detention is required.

JURISDICTION

10. Petitioner is in the physical and constructive custody of Respondents and, upon and information and belief, is detained at the Baltimore ERO Hold Room in Baltimore, Maryland.

11. This Court has jurisdiction under 28 U.S.C. §2241(c)(5) (habeas corpus), 28 U.S.C. §2241(c)(3) (habeas corpus), U.S.C. §1331 (federal question), and Article I, section 9, clause

2 of the United States Constitution (the Suspension Clause).

12. 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.

VENUE

13. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue lies in the United States District Court for the District of Maryland, the judicial district in which Petitioner is currently detained.

14. 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 the District of Maryland.

REQUIREMENTS OF 28 U.S.C. § 2243

15. 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.*

16. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted). This time limit "is subordinate to the Court's discretionary authority to set deadlines under Rule 4[.]" *See Diaz-Ortega v. Lund*, 2019 U.S. Dist. LEXIS 250454 (W.D. La. June 28, 2019) (marks and

citation omitted).

PARTIES

17. Petitioner, Hamilton Alexander Estrada Moscoso, is a citizen of El Salvador who has resided in the United States continuously since 2003. Petitioner has been in immigration detention since February 09, 2026, when ICE officers detained him while he was on his way to work. Petitioner is unable to obtain review of his custody by an Immigration Judge, pursuant to the decision of the Board in *Matter of Yajure Hurtado*, 29I & N. Dec. 216 (BIA 2025).
18. Respondent Matthew Elliston is the Acting Field Office Director of Baltimore, Maryland Field Office of Enforcement and Removal Operations, Immigration and Customs Enforcement. As such, Mr. Elliston is Petitioner's physical custodian and is responsible for Petitioner's detention. Mr. Elliston is sued in his official capacity.
19. Respondent Kristi Noem is the Secretary of the DHS. Secretary Noem is responsible for the implementation and enforcement of the INA, and oversees ICE, which is responsible for Petitioner's detention. Secretary Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.
20. Respondent Todd Lyons is the Senior Official Performing the Duties of the Director of Immigration and Customs Enforcement. Mr. Lyons is sued in his official capacity.
21. Respondent Pamela Jo Bondi is the Attorney General of the United States. Ms. Bondi is responsible for the Department of Justice ("DOJ"), of which the EOIR, and the immigration court system it operates, is a component agency. Ms. Bondi is sued in her official capacity.
22. Respondent, Daren K. Margolin, is the Director of the EOIR. Mr. Margolin is sued in his official capacity.

EXHAUSTION

23. The failure to exhaust administrative remedies does not bar Petitioner's claims unless

"Congress specifically mandates" exhaustion. *Miranda v. Garland*, 34 F.4th 338, 351 (4th Cir. 2022) (1993) (quoting *McCarthy v. Madigan*, 503. U.S. 140, 144 (1992)).

24. Moreover, because Petitioner's continued detention violates his right to due process—a constitutional right—administrative exhaustion is excused. *See Guitard v. U.S Sec'y of the Navy, 967 F.2d 737, 741 (2d Cir. 1992) ("Exhaustion of administrative remedies may not be required when . . . a plaintiff has raised a 'substantial constitutional question.'").*

25. Although the Court may impose exhaustion requirements as a prudential matter, it should not do so in this case because further administrative exhaustion would be futile. Critically, as part of the recent policy shift, the Board issued *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), concluding that noncitizens who entered the United States without inspection at any point are forever after considered to be "arriving aliens" who are "seeking admission" and thus subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). Even though, as discussed below, this decision is legally erroneous, all immigration judges—including Appellate Immigration Judges at the Board of Immigration Appeals—are obligated to apply published Board precedent, and thus the result of any attempted bond request is foreclosed. 8 C.F.R. § 103.10(b).

LEGAL FRAMEWORK

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

27. First, 8 U.S.C. §1226 authorizes the detention of noncitizens who are in "standard" removal proceedings before an Immigration Judge. 8 U.S.C. §1229a. In these "standard" removal proceedings, individuals are entitled to full due process rights afforded by the Constitution, including the right to have an attorney represent them, the right to present evidence, call

witnesses on their behalf, cross examine witnesses, testify on their own behalf, and appeal an adverse decision. Individuals in §1226(a) detention are generally entitled to a bond hearing at the outset of their detention, *See*8 C.F.R. §§1003.19(a), 1236.1 (d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C. §1226(c).

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

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

30. This case concerns detention provisions at §§ 1226(a) and 1225(b)(2).

31. Following the enactment of the IIRIRA, EOIR and the former Immigration and Naturalization Service (INS) 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). Section 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

32. Thus, in the decades that followed, most people who entered without inspection and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. §

1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

33. A Petition for a Writ of Habeas Corpus under 28 U.S.C. §2241 is the proper vehicle to challenge the legality of immigration detention and to seek release or a bond hearing where custody violates the Constitution or federal law. *Jennings v. Rodriguez*, 583 U.S. 521 (2018).

34. While the REAL ID Act limits district court jurisdiction to review removal orders, it does not bar review of detention claims or constitutional challenges to custody. *Zadvydas v. Davis*, 533 U.S. 678 (2001).

35. The district court reviews such claims de novo, exercising independent judgment over statutory interpretation and constitutional questions. *Loper Bright Enterprises. v. Raimondo*, 603 U.S. 369 (2024).

36. Section 1226(a) sets out the "default rule" for the discretionary detention of citizen noncitizens "already present in the United States." *Jennings v. Rodriguez*, 583 U.S. at 303.

37. Under §1226(a) immigration authorities may make an initial determination as to detention, but noncitizens may then request a bond hearing before an Immigration Judge. 8 C.F.R. 1236.1(c)(8) and 8 C.F.R. 1236.1(d)(1).

38. At that hearing, the noncitizen "may secure his release if he can convince the officer or immigration judge that he poses no flight risk and no danger to the community." *Nielsen v. Preap*, 586 U.S. 392, 397-98 (2019) (citing 8 C.F.R §§1003.19(a), 8 C.F.R. §236.1 (c) (8) and (d)(1)).

39. By contrast, 8 U.S.C. §1225 governs the detention of those "seeking admission".

40. An applicant for admission is defined as a noncitizen "present in the United States who has

not been admitted or who arrives in the United States." 8 U.S.C. §1255(a)(1).

41. Applicants for Admission "fall into one of two categories, those covered by §1225(b)(1) and those covered by §1225(b)(2)." *Jennings v. Rodriguez*, 583 U.S. at 287.

42. The second category creates a catchall mandatory detention provision: "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 [full removal proceedings under 8 U.S.C. §1229]." 8 U.S.C. §1225(b)(2)(A).

43. Unlike noncitizens detained under 8 U.S.C. §1226(a), those detained under §1225 may only be released via parole "for urgent humanitarian reasons or significant public benefit." *Jennings v. Rodriguez*, 583 U.S. at 288 (quoting 8 U.S.C. §1182(d)(5)(A)).

44. Thus, in the decades that followed, most people who entered without inspection and were placed in§1229(a) 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 Immigration Judge or other hearing officer. *See* 8U.S.C. §1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that 8 U.S.C. §1226(a) simply "restates" the detention authority previously found at §1252(a)).

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

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

47. On September 5, 2025, the BIA adopted this same position in a published decision. *Matter of Yajure Hurtado,* 29 I&N Dec. 216 (BIA 2025). There, the Board held that all noncitizens who entered the United States without admission or parole are subject to detention under 8 U.S.C. §1225(b)(2)(A) and are ineligible for Immigration Judge bond hearings.

48. Since Respondents adopted this new erroneous policy, dozens of federal courts rejected DHS's new interpretation of INA's detention authorities and Courts have likewise rejected *Matter of Yajure Hurtado*, which adopts the same reading of the statute as ICE. Subsequently, federal courts have rejected the decision in *Yajure Hurtado.*

49. Courts have uniformly rejected DHS's and EOIR's new interpretation because it defies the INA. Subsequently, court after court has adopted the same reading of the INA's detention authorities and rejected ICE and EOIR's new interpretation. *See . 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. 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11 2025), *report and recommendation adopted*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588, at *1 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN- SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv 01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 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, at *8 (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); *see also, e.g.*, *Palma Perez v. Berg*, No. 8:25CV494, 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).

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

51. Section 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." These removal hearings are held under §1229a, to "decid[e] the inadmissibility or deportability of a[] [noncitizen]." *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025).

52. The text of §1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. §1226(c)(1)(E). Subparagraph (E)'s reference to such people makes clear that, by default, such people are afforded a bond

hearing under subsection (a). As the *Rodriguez Vazquez* court explained, "[w]henCongress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies." 779 F. Supp. 3d 1239, 1257 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S.393, 400 (2010)).

53. Section 1226 therefore applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole.

54. 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).

55. Indeed, the Supreme Court has explained that this mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether a [noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

56. Prolonged civil detention without an individualized bond hearing violates the Fifth Amendment's Due Process Clause. *See Jennings v. Rodriguez*, 583 U.S. at 540-41; *Matthews v. Eldridge*, 424 U.S. 319 (1976). DHS must justify continued detention as necessary to ensure appearance at hearings or public safety, and less restrictive alternatives must be considered.

57. Further, and pursuant to *Lazaro Maldonado Bautista et al. v. Ernesto Santacruz Jr et al,* , "Individuals who are present in the United States and have not been inspected and authorized by an immigration officer are merely part of the broadly defined term "[noncitizen]": any person not a citizen or national of the United States. §1101(a)(4). As the

plain language of §1226(a) supports Petitioner's interpretation, and "no insuperable textual barrier" hinders this reading, …., §1226(a) is the appropriate governing authority over Petitioner's detention". Case 5:25-cv-01873at 14.

58. Petitioner is a *Maldonado Bautista* Class Member as he was not detained by border officials when he first entered the United States.

59. Nonetheless, pursuant to *Matter of Yajure Hurtado*, EOIR has a policy and practice of applying the mandatory detention provisions at §1225(b)(2) to individuals like Petitioner. 29 I&N Dec. 216 (BIA 2025).

60. The application of §1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates 8 C.F.R.§§236.1, 1236.1, and 1003.19.

STATEMENT OF FACTS

61. Petitioner is a citizen of El Salvador who entered the United States without inspection in 2003 and has resided in the United States continuously ever since.

62. On Monday, February 09, 2026, Petitioner was detained by ICE while traveling to work and is now detained by Respondents at the Baltimore Hold Room of ICE ERO located at 31 Hopkins Plaza, Baltimore, Maryland 21201.

63. Although Petitioner does not appear in the ICE Detainee Locator, Petitioner has been calling his family members and informing that that he is located at the Baltimore Hold Room.

64. Petitioner has established deepo roots in his community. Petitioner is employed full-time to support himself. The Petitioner's mother recently became a Lawful Permanent Resident of the United States and the Petitioner is employed to support his mother.

65. Petitioner is not a danger to the community. Upon information and belief, Petition has no criminal arrests and his only detention has been his civil immifration enforcement

apprehension on February 09, 2026.

66. Petitioner is not a flight risk. He has lived in the United States for over twenty-two years, maintains full-time employment, and has relief to removal available to him in the form of cancellation of removal pursuant to 8 U.S.C. § 1229b, INA 240A(b).

67. Petitioner is not subject to INA §236(c) as he has no convictions for any crime, let alone a crime involving moral turpitude, aggravated felony, or any other ground of mandatory detention under INA §236(c).

PREVIOUS LAWSUITS

68. Petitioner has not filed any other cases or motions in state or federal court dealing with the same facts as in this case.

CLAIMS FOR RELIEF

COUNT I

Violation of the Immigration and Nationality Act (hereinafter "INA")

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

70. 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.

71. The application of 8 U.S.C. §1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates the INA. The mandatory-detention clause at 8 U.S.C. §1225(b)(2)(A) applies only to arriving aliens or to noncitizens caught in the act of seeking admission at a port of entry.

72. By its plain terms, it does not extend to individuals who entered the United States and were apprehended within the interior. Such individuals are governed by 8 U.S.C. §1226(a), which

authorizes discretionary custody and release on bond, unless they fall within the narrow mandatory-detention categories of §1225(b)(1) (expedited removal), §1226(c) (certain criminal aliens), or §1231 (post-order detention).

73. Respondents' reliance on §1225(b)(2)(A) to mandate Petitioner's detention contradicts the statutory text, structure, and history of the INA. Congress deliberately separated the detention provisions for arriving and present noncitizens; reading §1225(b) to subsume §1226(a) renders that distinction meaningless, violating the canon against surplusage.

COUNT II

Violation of the Bond Regulations

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

75. In 1997, after Congress amended the INA through Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (hereinafter "IIR IRA", the Executive Office for Immigration Review (hereinafter "EOIR") and the then-Immigration and Naturalization Service issued an interim rule to interpret and apply the IIR IRA.

76. Specifically, under the heading of "Apprehension, Custody, and Detention of Aliens," the agency explained that "[t]he effect of this change is that inadmissible aliens, except for arriving aliens, have available to them bond redetermination hearings before an immigration judge, while arriving aliens do not." 62 Fed. Reg. at 10323.

77. Further, and pursuant to *Lazaro Maldonado Bautista et al. v. Ernesto Santacruz Jr et al,* , "Individuals who are present in the United States and have not been inspected and authorized by an immigration officer are merely part of the broadly defined term "[noncitizen]": any person not a citizen or national of the United States. §1101(a)(4). As the

plain language of §1226(a) supports Petitioner's interpretation, and "no insuperable textual barrier" hinders this reading, …., §1226(a) is the appropriate governing authority over Petitioner's detention". Case 5:25-cv-01873 at 14.

78. Nonetheless, pursuant to *Matter of Yajure Hurtado*, EOIR has a policy and practice of applying the mandatory detention provisions at §1225(b)(2) to individuals like Petitioner. 29 I&N Dec. 216 (BIA 2025).

79. The application of §1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates 8 C.F.R. §§236.1, 1236.1, and 1003.19

COUNT III

Violation of the Suspension Clause of the Constitution (U.S. Const. art. I, §9, cl. 2)

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

81. The Suspension Clause of Article I, Section 9 of the Constitution provides that "The Privilege of the Writ of Habeas Corpus shall not be suspended, unless in Cases of Rebellion or Invasion the public Safety may require it."

82. This constitutional safeguard predates the Bill of Rights and stands as the fundamental guarantee that government officials may not imprison individuals without accountability to an independent judiciary. The Great Writ is not a mere procedural device; it is the constitutional mechanism through which the people ensure that executive detention remains subject to law. *INS v. St. Cyr*, 533 U.S. 289, 301 (2001); *Boumediene v. Bush*, 553 U.S. 723, 739–46 (2008).

83. By classifying Petitioner as subject to mandatory detention under 8 U.S.C. §1225(b)(2)—a provision that forecloses any individualized custody determination and disclaims

Immigration Judge jurisdiction—Respondents have effectively extinguished all statutory and administrative avenues for review of Petitioner's confinement.

84. The Board does not entertain bond appeals where the Immigration Judge finds no jurisdiction, and no other administrative process exists to test the legality of detention. Absent Habeas review in this Court, Petitioner would have no forum in which to challenge the basis of his custody or the agency's misapplication of the law. Such a regime amounts to an unconstitutional suspension of the writ of habeas corpus.

85. The Supreme Court has consistently held that the writ must remain available to test the legality of executive detention, even in the immigration context. In *INS v. St. Cyr*, the Court reaffirmed that "a serious Suspension Clause issue would be presented if a federal court were denied jurisdiction to hear a pure question of law" regarding detention or removal. 533 U.S. at 305–06.

86. Likewise, in *Boumediene v. Bush*, the Court emphasized that the writ's core function is to ensure that the Executive "does not detain individuals except in accordance with law." 553 U.S. at 779.

87. These decisions confirm that the constitution minimum requires a judicial forum capable of determining whether the Government has lawful authority to detain a person and to order release if that authority is lacking.

88. The post-*Hurtado* detention framework deprives Petitioner of that constitutional protection. EOIR and ICE have erected a system in which a noncitizen apprehended in the interior can be held indefinitely under §1225(b)(2) without a bond hearing and without access to any reviewing tribunal.

89. This administrative black hole is precisely what the Framers sought to forbid: Executive

imprisonment unreviewable by the judiciary. As Professor Kamin explains in *The Great Writ as Popular Sovereignty*, the Suspension Clause embodies the principle that the legitimacy of government itself depends upon the continual availability of the writ to test the lawfulness of confinement. 77 Stan. L. Rev. 297 (2025). When the Government constructs a scheme that removes an entire category of persons from judicial review, it acts in derogation of the people's reserved right to demand legal justification for state restraint, and the principles of popular sovereignty. *See Id.* at 302 ("[T]he principal purpose of American habeas is the vindication not of individual physical liberty, but of popular sovereignty. More simply put, we should understand American habeas as a Great Writ of Popular Sovereignty").

90. Petitioner's detention under §1225(b)(2) thus violates not only the INA and the APA but the structural command of the Constitution. The Suspension Clause protects against exactly this scenario—where an individual is held by executive order with no opportunity to obtain judicial scrutiny of the detention's legality.

91. Because Respondents' actions have eliminated all practical means for Petitioner to challenge his confinement, the statutory scheme as applied to him constitutes an unconstitutional suspension of the writ of habeas corpus.

92. Petitioner therefore respectfully requests that this Court (1) declare that the application of §1225(b)(2) to his case violates the Suspension Clause; (2) exercise its habeas jurisdiction under 28 U.S.C. §2241 to review the legality of his detention; and (3) order his immediate release or, at minimum, a prompt individualized custody hearing under 8 U.S.C. §1226(a) before a neutral immigration judge.

COUNT IV

Violation of the Fifth Amendment to the Constitution (Prolonged Detention in Violation of Substantive Due Process)

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

94. The Fifth Amendment to the United States Constitution provides that no person shall "be deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V.

95. This protection extends to all persons within the United States, including noncitizens, regardless of manner of entry. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

96. At the core of the liberty the Due Process Clause protects is freedom from physical restraint by the government, a right that may be curtailed only in the most exceptional circumstances and for purposes consistent with law. *Id.* at 690.

97. Immigration detention, though civil in form, must remain regulatory in purpose—it may not become punitive. Detention is justified only to ensure attendance at proceedings or to protect the community from danger. *Jennings v. Rodriguez*, 583 U.S. 521, 540–41 (2018).

98. When detention extends beyond the period reasonably necessary to achieve those purposes, or when it occurs without any individualized determination of necessity, it violates the substantive due process guarantee that government action not be arbitrary, excessive, or purposeless. *Demore v. Kim*, 538 U.S. 510, 528 (2003); *Zadvydas*, 533 U.S. at 690.

99. Petitioner has now been detained for a prolonged period—since February 10, 2026—without any opportunity to seek release or to demonstrate that he poses no risk of flight or danger. Petitioner resided in the United States since April 2019, has no disqualifying criminal history, and has deep ties to his community. There is no rational justification for

treating him as a mandatory-detention case under 8 U.S.C. §1225(b)(2), a provision intended for arriving aliens at ports of entry.

100. Petitioner's continued confinement has lost any legitimate regulatory purpose and has become arbitrary and punitive in violation of substantive due process.

101. Courts across the country have recognized that prolonged detention under §1225(b)(2) or §1226(a) without a bond hearing offends the Constitution.

102. Petitioner's detention bears all the hallmarks of unconstitutionality: indefinite duration, categorical denial of process, and complete disregard for his individual circumstances. It imposes an excessive restraint on liberty that is not narrowly tailored to any legitimate governmental interest.

103. The Due Process Clause forbids the Government from detaining a person indefinitely and without justification. As the Supreme Court held in *Zadvydas*, "once detention's purpose no longer bears a reasonable relation to the Government's goal, the detention may not continue." 533 U.S. at 690.

104. Accordingly, Petitioner's continued mandatory detention under §1225(b)(2) violates the substantive component of the Due Process Clause of the Fifth Amendment. Petitioner respectfully requests that this Court declare his detention unconstitutional and order his immediate release or, in the alternative, direct Respondents to provide a prompt, individualized custody hearing before a neutral immigration judge, at which the Government must justify continued detention by clear and convincing evidence.

COUNT V

Violation of the Fifth Amendment to the Constitution (Procedural Due Process)

105. Petitioner re-alleges and incorporates by reference each and every allegation in the

preceding paragraphs as if fully set forth herein.

106. The Fifth Amendment provides that no person shall "be deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V. Freedom from physical restraint lies "at the heart of the liberty that the Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

107. This protection extends to all persons within the United States, including noncitizens, regardless of their status or manner of entry. *Id.* at 693.

108. Civil immigration detention is constitutionally permissible only when it is narrowly tailored to serve legitimate regulatory purposes—ensuring appearance at proceedings and protecting the community—and only when accompanied by meaningful procedural safeguards. *Jennings v. Rodriguez*, 583 U.S. 521, 540–41 (2018).

109. By classifying Petitioner under 8 U.S.C. §1225(b)(2) and denying any opportunity for an individualized bond hearing, Respondents have imposed mandatory detention without process, thereby violating Petitioner's substantive and procedural due process rights.

110. The application of §1225(b)(2) to a long-term resident apprehended in the interior bears no rational relation to Congress's stated objectives and results in an arbitrary deprivation of liberty. Substantively, detention that continues without individualized review ceases to serve a regulatory purpose and becomes punitive, contrary to *Zadvydas* and *Demore v. Kim*, 538 U.S. 510, 528 (2003).

111. Procedurally, Respondents' categorical denial of a bond hearing fails the *Mathews v. Eldridge*, 424 U.S. 319 (1976), balancing test. The private interest at stake—freedom from unlawful confinement—is of the highest order. The risk of erroneous deprivation is acute where, as here, no hearing exists to assess flight risk or danger.

112. The government's interests can be fully satisfied through individualized bond determinations that safeguard both liberty and the integrity of removal proceedings. *See Chogllo Chafla v. Scott*, No. 2:25-cv-00437-SDN, 2025 U.S. Dist. LEXIS 184909, at *333 (D. Me. Sep. 21, 2025) ("In sum, the Mathews factors weigh in favor of the Petitioners and compel a hearing on detention before an Immigration Judge where they may have the opportunity to be heard.").

113. Petitioner has been gravely prejudiced by this misapplication of law and by the government's refusal to afford a bond redetermination hearing. His detention, despite strong family ties, community support, and an unblemished record, serves no lawful purpose and offends the fundamental guarantees of due process.

114. Petitioner respectfully requests that this Court declare his continued mandatory detention unconstitutional and order his immediate release or, in the alternative, direct Respondents to provide a prompt, individualized custody hearing before a neutral immigration judge, at which the government must justify continued detention by clear and convincing evidence.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Honorable Court grant the following relief:

1. Assume jurisdiction over this matter;
2. Order that Petitioner shall not be transferred outside the District of Maryland while this habeas petition is pending;
3. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;
4. Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner immediately

or provide Petitioner with a bond hearing pursuant to 8 U.S.C. §1226(a) within seven days;

5. Declare that Petitioner's detention is unlawful; and

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

Certification Pursuant to Local Standing Order 2025-01

I, Adam Luis Rodriguez, the undersigned, hereby certify pursuant to Fed. R. Civ. P. 11, as follows: (1) I understand, based on communications from Petitioner's immigration attorney, Jay S. Marks, of the Law Offices of Jay S. Marks, LLC, the Petitioner to be presently detained in Maryland, based on the fact that Petitioner recently called his family from the ICE Baltimore, Maryland Hold Room; (2) emergency relief is necessary, because Petitioner is at risk of unlawful removal from the United States; and (3) this Court has subject-matter jurisdiction over the Petitioner pursuant to 28 U.S.C. § 2241, and no jurisdiction-stripping statute applies to prevent habeas corpus review of detention and unlawful removal.

Respectfully submitted this 13th day of February 2026,

/s/ Adam Luis Rodriguez
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