

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

**Javier Enrique GUTIERREZ ARELLANO,** )

Petitioner, )

v. )

**Thomas BERGAMI**, Warden, Prairieland )  
Detention Center; **Robert CERNA**, Acting )  
Director of Dallas Field Office, U.S. Immigration )  
and Customs Enforcement; **Todd LYONS**, )  
Acting Director of Immigration and Customs )  
Enforcement; **Kristi NOEM**, Secretary of the )  
U.S. Department of Homeland Security; **Pam )  
BONDI**, Attorney General of the United States; )  
in their official capacities, )

Respondents. )

Case No. 3:26-cv-412

**PETITION FOR WRIT OF  
HABEAS CORPUS**

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## INTRODUCTION

1. Petitioner, Javier Enrique Gutierrez Arellano, is in the physical custody of Respondents. He now faces unlawful detention because the Department of Homeland Security (DHS) and the Department of Justice (DOJ) have concluded Petitioner is subject to mandatory detention.
2. Petitioner is charged with, inter alia, having entered the United States without inspection (i.e. without being admitted or paroled). 8 U.S.C. § 1182(a)(6)(A)(i). Based on this allegation, Respondents have concluded that they do not have jurisdiction to provide Petitioner a bond hearing.
3. On July 8, 2025, the DHS, in collaboration with the DOJ, issued a new policy 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 inspection—to be an “applicant for admission” under 8 U.S.C. § 1225(b)(2)(A) and therefore subject to mandatory detention.
4. Before this new policy was announced, the Executive Office for Immigration Review (EOIR), which administers the Immigration Courts, through the Board of Immigration Appeals (BIA), components of the DOJ, had already started laying the groundwork for this abrupt policy change. On May 15, 2025, the BIA issued a decision in which it held that a person who enters without inspection and is arrested and detained without a warrant while arriving in the United States and subsequently placed in removal proceedings is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and is ineligible for any subsequent release on bond.

5. Later on September 5, 2025, the BIA finished building the edifice of Respondents' unprecedented and illegal mandatory detention scheme by turning the DHS policy into binding precedent by issuing a decision which ruled that the Immigration Judges of the EOIR did "not have the authority" to hear any bond case for anyone who had entered the United States without inspection.
6. Because of these BIA decisions and the DHS policy, Petitioner cannot request a bond hearing before the Immigration Court of the EOIR. An Immigration Judge has no jurisdiction to hear the case.
7. The Respondents have concluded that, notwithstanding Respondents allowing Petitioner to enter the United States to apply for asylum and his time residing in the United States, he is nevertheless an "applicant for admission" who is "seeking admission" and subject to mandatory detention under § 1225(b)(2)(A).
8. 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, 8 U.S.C. § 1226(a), which 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.
9. Respondents' new legal interpretation is plainly contrary to the statutory framework and contrary to decades of agency practice which applied § 1226(a) to people like Petitioner.
10. On February 6, 2026, the United States Court of Appeals for the Fifth Circuit endorsed the contrary statutory interpretation in *Buenrostro-Mendez v. Bondi*, Nos. 25-20496 &

25-40701 (5th Cir. Feb. 6, 2026), foreclosing purely statutory claims to bond hearings under § 1226(a) within this Circuit.

11. However, neither *Yajure Hurtado* nor *Buenrostro-Mendez* addressed—much less resolved—the independent constitutional, administrative-law, equal-protection, Suspension Clause, or *Accardi*-based limitations on prolonged civil detention without individualized review. As the Supreme Court made clear in *Jennings v. Rodriguez*, 583 U.S. 281, 302–03 (2018), the absence of a statutory bond entitlement does not eliminate constitutional constraints on detention or foreclose habeas review.
12. Accordingly, even where § 1225(b)(2)(A) is assumed to govern detention, continued civil confinement remains subject to the Due Process Clause, the Administrative Procedure Act, the Suspension Clause, binding agency regulations, or release on other statutory bases. Detention that becomes prolonged, indefinite, arbitrary, or wholly insulated from meaningful review exceeds the lawful authority conferred by Congress and violates fundamental constitutional guarantees.
13. Furthermore, Petitioner is a Venezuelan national who holds Temporary Protected Status (TPS) under 8 U.S.C. 1254a. TPS holders may not be either detained or deported so long as their TPS is valid. The TPS statute provides that “[a]n alien provided temporary protected status under this section *shall not be detained* by the Attorney General on the basis of the alien’s immigration status in the United States.” 8 U.S.C. 1254a(d)(4) (emphasis added). That protection remains available even if the TPS holder has a final removal order or lacks other immigration status, because the government “shall not remove the alien from the United States during the period in which such [TPS] status is in effect.” 8 U.S.C. 1254a(a)(1)(A). *See also* 8 U.S.C. 1254a(a)(5) (TPS statute provides no

authority to “deny temporary protected status to an alien based on the alien’s immigration status”); 8 U.S.C. 1254a(g) (TPS statute constitutes the exclusive authority for affording nationality-based protection to “otherwise deportable” non-citizens).

14. TPS holders retain TPS status until it is withdrawn on specified grounds, following notice and an opportunity to respond, 8 C.F.R. § 244.14, or until their country’s designation is terminated. 8 C.F.R. § 244.19.
15. While Respondent DHS Secretary Kristi Noem purported to terminate TPS for Venezuela on February 5, 2025, the district court in *NTPSA* issued a final judgment on December 10, 2025 declaring the termination unlawful. *Nat’l TPS All. v. Noem*, No. 25-CV-01766-EMC, 2025 WL 3539156, at \*3 (N.D. Cal. Dec. 10, 2025).
16. Absent a standing, lawful termination decision, Venezuela’s TPS designation is automatically extended by operation of the statute. 8 U.S.C. § 1254a(b)(3)(B). *See also* 88 Fed. Reg. 40,317 at 40,321 (June 21, 2023) (explaining that, “absent any standing secretarial” decision to terminate TPS, a TPS designation is automatically extended in six-month increments).
17. Petitioner has now been detained by U.S. Immigration and Customs Enforcement, despite the unambiguous statutory command that TPS holders may not be either detained or deported.
18. Petitioner challenges their detention as a violation of the Immigration and Nationality Act (INA) and the Due Process Clause of the Fifth Amendment.
19. Petitioner respectfully requests that this Court grant a Writ of Habeas Corpus and order Respondents to release them from custody. Petitioner seeks habeas relief under 28 U.S.C. 2241, which is the proper vehicle for challenging civil immigration detention.

*See Zadvydas v. Davis*, 533 U.S. 678, 687-88 (2001).

20. Accordingly, Petitioner seeks a writ of habeas corpus requiring his immediate release from custody or, in the alternative that he be provided a bond hearing under § 1226(a) within seven days in which DHS bears the burden of establishing the necessity of Petitioner's continued detention.

### **JURISDICTION**

21. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Prairieland Detention Center in Alvarado, Texas.
22. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.* This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).
23. 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**

24. 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 Northern District of Texas, the judicial district in which Petitioner currently is detained.
25. 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 Northern District of Texas.

### **REQUIREMENTS OF 28 U.S.C. § 2243**

26. 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. 28 U.S.C. § 2243. If an order to show cause 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.* (emphasis added).
27. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as “perhaps the most important writ known to the constitutional law of England, affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

#### **PARTIES**

28. Petitioner is a citizen of Venezuela who has been in immigration detention since January 2026 and he is currently detained at Prairieland Detention Center. After arresting Petitioner, ICE did not set a bond. However, because of Respondents’ new policies and case decisions, Petitioner also cannot request a bond hearing before an Immigration Judge.
29. Respondent Thomas Bergami is the Warden of Prairieland Detention Center, and he has immediate physical custody of Petitioner pursuant to the facility’s contract with U.S. Immigration and Customs Enforcement to detain noncitizens and is a legal custodian of Petitioner. Respondent Bergami is a legal custodian of Petitioner.
30. Respondent Robert Cerna is sued in his official capacity as the Acting Director of the Dallas Field Office of the Enforcement and Removal Operations of the U.S. Immigration

and Customs Enforcement. Respondent Johnson is a legal custodian of Petitioner and has authority to release him.


31. Respondent Todd Lyons is the Acting Director of U.S. Immigration and Customs Enforcement. As such, Respondent Lyons is a legal custodian of Petitioner and is responsible for Petitioner's detention, release and/or removal. He is named in his official capacity.

32. Respondent Kristi Noem is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security. In this capacity, Respondent Noem is responsible for the implementation and enforcement of the Immigration and Nationality Act, and oversees the U.S. Immigration and Customs Enforcement, the component agency responsible for Petitioner's detention. Respondent Noem is a legal custodian of Petitioner.

33. Respondent Pam Bondi is sued in her official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice. In that capacity, she has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review, which administers the Immigration Courts and the Board of Immigration Appeals. Respondent Bondi is a legal custodian of Petitioner.

#### **STATEMENT OF FACTS**

34. Petitioner is a 45-year-old citizen of Venezuela. Exh. A. Petitioner entered the United States on November 26, 2021. Exh. B.

35. Upon his entry into the United States, Petitioner was processed by the DHS, was assigned an Alien (File) Number  and the DHS allowed Petitioner to enter the country by releasing him with a Form I-220A, Order of Release on Recognizance. Exh. C. He

has resided in the United States since then and was living in Mansfield, Texas before his detention.

36. In order to apply to remain in the United States lawfully, Petitioner applied for asylum and his removal case is currently still pending. Exh. I; Exh. J. Petitioner also applied for and was granted Temporary Protected Status in the United States initially pursuant to the 2023 designation of TPS for Venezuela. Exh. D. Petitioner has consistently renewed TPS since this initial registration. Exh. E. Petitioner is also a class member of National TPS Alliance. Exh. F.
37. On January 15, 2026, Petitioner was arrested by ICE at an appointment at the Dallas Field Office of ICE while he was fulfilling his obligation to report to them. Exh. C. Petitioner is now detained at the Prairieland Detention Center in Alvarado, Texas. Exh. G. DHS has placed Petitioner in removal proceedings before the Immigration Court pursuant to 8 U.S.C. § 1229a. Exh. B; Exh. C. ICE has charged Petitioner with, inter alia, being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as someone who entered the United States without inspection (i.e. without being admitted or paroled). Exh. B; Exh. J.
38. Since living here in the United States, he has established community ties and has been lawfully employed. He also has never been arrested for any crimes.
39. Following Petitioner's arrest and transfer to Prairieland Detention Center, ICE issued a custody determination to continue Petitioner's detention without an opportunity to post bond or be released on other conditions. However, because of Respondents' policies, Petitioner cannot request a bond hearing before the Immigration Judge, because the BIA has stripped Immigration Courts of their jurisdiction, and his unlawful detention cannot be litigated before that body. Exh. K.

40. On February 4, 2026, Petitioner’s counsel, Attorney Oscar Mendoza, sent emails to the Assistant U.S. Attorney for the Northern District of Texas and to Immigration and Customs Enforcement. The message cited the TPS statute’s non-detention provision and included as an attachment Petitioner’s proof of TPS status and requested release of Petitioner. Neither the Assistant U.S. Attorney nor Immigration and Customs Enforcement replied.

## LEGAL FRAMEWORK

### A. Petitioner’s detention violates the TPS statute

41. The Court can resolve this habeas petition by analyzing one statutory provision. The TPS statute unequivocally prohibits the detention of persons with valid TPS, and Petitioner must be released. See 8 USC 1254a(a)(1)(A), (d)(4) (“[a]n alien provided temporary protected status under this section *shall not be detained* by the Attorney General”) (emphasis added).<sup>1</sup> It is hard to imagine a clearer statutory mandate proscribing detention.
42. Venezuela was first designated for TPS on March 9, 2021, allowing Venezuelans residing in the U.S. since March 8, 2021 to apply for protection. 86 Fed. Reg. 13,574 (“2021 Designation”). On September 8, 2022, Venezuela’s 2021 designation was extended by 18 months. 87 Fed. Reg. 55,024. Venezuela was designated a second time on October 3, 2023, extending protection for the 2021 group and also allowing more recently arrived Venezuelans to apply. 88 Fed. Reg. 68,130 (“2023 Designation”).
43. On January 17, 2025, the DHS Secretary extended the 2023 Venezuela designation by 18 months, through October 2, 2026. 90 Fed. Reg. 5,961. In the extension order, DHS also streamlined the registration process for TPS holders by consolidating them into a

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<sup>1</sup> “Attorney General” in Section 1254a now refer to the Secretary of the Department of Homeland Security. See 8 U.S.C. 1103; 6 U.S.C. 557.

single track, “allow[ing] existing beneficiaries of either the 2021 or 2023 TPS designation to seek an 18-month extension of status through October 2, 2026.” *Id.* at 5,962. DHS cited Venezuela’s ongoing “complex, serious and multidimensional humanitarian crisis,” which has “disrupted every aspect of life,” and concluded that the “extraordinary and temporary conditions supporting Venezuela’s TPS designation remain.” *Id.* at 5,963 (citation omitted).

44. On February 3, 2025, just days after she took office, Respondent Secretary Noem purported to “vacate” DHS’ January 17 extension of TPS for Venezuela. 90 Fed. Reg. 8805 (Feb. 3, 2025). That decision was the first vacatur of a TPS extension in the 35-year history of the TPS statute.

45. On February 5, 2025, DHS published a notice in the Federal Register purporting to terminate the 2023 Venezuela Designation. 90 Fed. Reg. 9040 (Feb. 5, 2025).

46. On September 8, 2025, DHS published a notice in the Federal Register purporting to terminate the 2021 designation of TPS for Venezuela.<sup>2</sup> 90 Fed. Reg. 43225 (Sept. 8, 2025).

47. On February 19, the National TPS Alliance and seven individual Venezuelan TPS holders sued the federal government, alleging that the vacatur of the January 17, 2025 extension of TPS for Venezuela and subsequent termination of Venezuela’s 2023 TPS designation were contrary to the TPS statute in violation of the Administrative Procedure Act and unlawful under the Fifth Amendment. *Nat’l TPS All. v. Noem*, No. 25-CV-01766-EMC (N.D. Cal. Filed Feb. 19, 2025).

48. On December 10, 2025, the district court in *NTPSA* issued a final judgment declaring

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<sup>2</sup> The termination of Venezuela’s 2021 designation is not at issue in this case because Petitioner held TPS under Venezuela’s 2023 designation.

the vacatur of the January 17, 2025 extension of TPS for Venezuela and termination of Venezuela's 2023 TPS designation unlawful. *Nat'l TPS All. v. Noem*, No. 25-CV-01766-EMC, 2025 WL 3539156, at \*3 (N.D. Cal. Dec. 10, 2025) ("*NTPSA* December 10 Order"); Exh. H ("*NTPSA* December 10 Order"). The court stayed its order for two weeks to permit the government to appeal and/or seek a stay. *Id.* The government did neither.

49. Pursuant to the *NTPSA* December 10 Order, Petitioner retains TPS because his TPS has never been withdrawn and the only action purporting to deprive him of TPS status has been vacated as unlawful. He was granted TPS and applied to renew it timely and is a member of the National TPS Alliance.
50. The Court need not delve further in an attempt to understand other aspects of Petitioner's immigration status, because TPS protection remains valid even if the TPS holder has a final removal order or lacks other immigration status. 8 U.S.C. 1254a(a)(1)(A) (the government "shall not remove the alien from the United States during the period in which such [TPS] status is in effect."). Indeed, individuals with a final order of removal are statutorily eligible for TPS and may not be denied TPS if otherwise eligible on the basis of that removal order. 8 U.S.C. 1254a(a)(5) (TPS statute provides no authority to "deny temporary protected status to an alien based on the alien's immigration status"). *See also* 8 U.S.C. 1254a(g) (TPS statute constitutes the exclusive authority for affording nationality-based protection to "otherwise deportable" non-citizens). For that reason alone, this Court should grant the writ and order Petitioner's immediate release. *See* 28 U.S.C. 2241(c)(3) (authorizing writ for people detained in violation of federal law).
51. Petitioner may not be legally detained or deported, and this Court should order

Petitioner's immediate release him from ICE custody. *See* 28 U.S.C. 2241(c)(3) (authorizing writ for people detained in violation of federal law).

**B. Petitioner's release is available through 8 U.S.C. § 1226**

52. The Immigration and Nationality Act (INA) prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.
53. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an immigration judge. *See* 8 U.S.C. § 1229a. 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).
54. 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).
55. 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).
56. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).
57. 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 earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).
58. 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).

59. 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. 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* 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)).
60. On May 15, 2025, the BIA issued a decision in which it held that a person who enters without inspection and is arrested and detained without a warrant while arriving in the United States and subsequently placed in removal proceedings is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and is ineligible for any subsequent release on bond. *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025).
61. Then on July 8, 2025, ICE, “in coordination with” the DOJ, announced a new policy that rejected the 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,” claims that all persons who entered the United States without inspection shall now be deemed “applicants for admission” under 8 U.S.C. § 1225, and therefore are subject to mandatory detention provision under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended (i.e. at the

border or in the interior of the United States), and affects those who have resided in the United States for months, years, and even decades.

62. On September 5, 2025, the BIA published a decision that adopts this same position and binds it on all Immigration Courts. *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). In *Matter of Yajure-Hurado*, the BIA explicitly held that “Immigration Judges lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission.” *Id.* In complete contradiction of decades of precedent, the Board stripped Immigration Judges of jurisdiction over bond for anyone who has entered the United States without inspection.
63. ICE and EOIR have adopted this position even though federal courts have rejected this exact conclusion. For example, after Immigration Judges in Tacoma, Washington, stopped providing bond hearings for persons who entered the United States without inspection and who have since resided here, the U.S. District Court in the Western District of Washington found that such a reading of the INA is likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, --- F. Supp. 3d --- 2025 WL 1193850 (W.D. Wash. Apr. 24, 2025).
64. Since then, federal courts throughout the United States have agreed with the Western District of Washington and granted preliminary injunctive relief for petitioners who entered the United States without inspections. *See Padron Covarrubias v. Vergara*, 5:25-CV-112 (S.D. Tex. Oct. 8, 2025) (citing an extensive list of federal courts coming to the same conclusion as the Western District of Washington).

65. Nevertheless, on February 6, 2026, the United States Court of Appeals for the Fifth Circuit endorsed the statutory interpretation of *Matter of Yajure Hurtado* in the case of *Buenrostro-Mendez v. Bondi*, Nos. 25-20496 & 25-40701 (5th Cir. Feb. 6, 2026), foreclosing purely statutory claims to bond hearings under § 1226(a) within this Circuit.
66. But this interpretation defies the INA and the Fifth Circuit’s decision can be distinguished in Petitioner’s case. The plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to individuals who entered the United States without inspection and were released into the interior to complete removal proceedings.
67. 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].”
68. 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]hen Congress creates “specific exceptions” to a statute’s applicability, it “proves” that absent those exceptions, the statute generally applies. *Rodriguez Vazquez*, 2025 WL 1193850, at \*12 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).
69. 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.

70. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or at the U.S. border. The framework of § 1225(b)(2) is premised on inspections at the border of “applicant[s] for admission” who are “seeking admission” to the United States. 8 U.S.C. § 1225(b)(2)(A). 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). Furthermore, the INA defines “admission,” to mean “the lawful entry... into the United States after inspection and authorization by an immigration officer.” 8 U.S.C. § 1101(a)(13)(A). As courts have reasoned, even though an applicant for admission has not been “admitted” to the United States, it does not mean that they always continue to be actively seeking a lawful entry (i.e. seeking admission). *Jimenez v. FCI Berlin, Warden*, 2025 WL 2639390, at \*21 (D.N.H. Sept. 8, 2025). An applicant for admission can enter the country, and therefore no longer seek entry, lawfully or otherwise, but rather seek “a lawful means to remain here.” *Id.* at \*22. Therefore, § 1225(b)(2)(A) cannot apply to someone who has already entered the United States and has been residing here for a period of time.

71. The practice of DHS to release individuals on their own recognizance after a detention at the border distinguishes Petitioner's case from the decision in *Buenrostro-Mendez v. Bondi*. Petitioner was released by DHS at the border with the forms I-220A (Order for Release on Recognizance), I-286 (Notice of Custody Determination), and I-200 (Warrant for Arrest of Alien). These forms which are used by DHS to release an individual on their recognizance, explicitly state: “In accordance with section 236 of the Immigration and Nationality Act and the applicable provisions of Title 8 of the Code of Federal

Regulations, you are being released on your own recognizance...” When a person is released on recognizance, even at the border, DHS necessarily makes a determination that the person falls under the INA detention and release scheme of § 1226(a), not § 1225(b). Many courts have agreed with this reasoning. *Gomes v. Hyde*, 2025 WL 1869299 (D. Mass. July 7, 2025) (concluding that a noncitizen originally detained under § 1225(b) but released on conditional parole under § 1226 and later rearrested on a § 1226 warrant was entitled to bond hearing under § 1226 and its implementing regulations); *see also Romero v. Hyde*, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Martinez v. Hyde*, 2025 WL 2084238 (D. Mass. July 24, 2025).

72. Lastly, the BIA decision of *Matter of Q. Li* is also limited to individuals arriving at the border and seeking admission, and therefore cannot apply to a person who has entered the United States after DHS releases them on their own recognizance. Indeed, this BIA decision was premised on the fact that the noncitizen in the case was released on humanitarian parole under INA § 212(d)(5), not with a Form I-220A release. This type of parole is a legal fiction where the noncitizen is physically permitted to enter the country but is “treated,” for legal purposes, “as if stopped at the border.” *See Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 139, 140 S. Ct. 1959, 207 L. Ed. 2d 427 (2020). Because she was legally still at the border (and, for the sake of argument but without conceding, still arriving and seeking admission) when her parole was terminated, she was returned to the custody from which she was paroled which was detention under § 1225(b)(2). § 1182(d)(5)(A); *Q. Li*, 29 I. & N. Dec. at 70-71.

73. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to people like Petitioner, who have already entered the United States after release by DHS and were residing in the United States for a period of time.

**C. Petitioner's detention violates Due Process**

74. Nothing in *Buenrostro-Mendez* strips this Court of jurisdiction under 28 U.S.C. § 2241 to adjudicate constitutional challenges to immigration detention or to review whether the Executive's custody scheme violates governing law. *Jennings* itself distinguishes unreviewable discretionary custody judgments from reviewable questions of law and constitutional claims. Likewise, *Zadvydas v. Davis*, 533 U.S. 678 (2001), and *Demore v. Kim*, 538 U.S. 510 (2003), both proceeded through § 2241 habeas and underscore that civil immigration detention must remain tethered to lawful purposes and must satisfy due process.

75. Petitioner's detention violates the Due Process Clause of the Fifth Amendment.

"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 [of the Fifth Amendment] protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

76. Petitioner's detention violates the Fifth Amendment's protection for liberty, for at least three related reasons. First, immigration detention must always "bear[] a reasonable relation to the purpose for which the individual was committed." *Demore v. Kim*, 538 U.S. 510, 527 (2003) (citing *Zadvydas*, 533 U.S. at 690). Where, as here, the government has no authority to deport Petitioner because of the TPS statute, detention is not reasonably related to its purpose.

77. Second, because Petitioner is not "deportable" insofar as the TPS statute bars his

deportation, the Due Process Clause requires that any deprivation of Petitioner's liberty be narrowly tailored to serve a compelling government interest. *See Reno v. Flores*, 507 U.S. 292, 301–02 (1993) (holding that due process “forbids the government to infringe certain ‘fundamental’ liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest”); *Demore*, 538 U.S. at 528 (applying less rigorous standard for “deportable aliens”). Petitioner's on-going imprisonment obviously cannot satisfy that rigorous standard.

78. Third, at a bare minimum, “the Due Process Clause includes protection against *unlawful* or arbitrary personal restraint or detention.” *Zadvydas v. Davis*, 533 U.S. 678, 718 (2001) (Kennedy, J., dissenting) (emphasis added). Where federal law explicitly prohibits an individual's detention, their detention also violates the Due Process Clause.
79. As a result, Petitioner remains in detention. Without relief from this court, he faces the prospect of months, or even years, in immigration custody as he litigates his case to remain in the United States.

## **CLAIMS FOR RELIEF**

### **COUNT I**

#### **VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT – 8 U.S.C. § 1254a**

80. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.
81. Section 1254a of Title 8 of the U.S. Code governs the treatment of TPS holders, including their detention and removal under federal immigration law.
82. Section 1254a(d)(4) states “[a]n alien provided temporary protected status under this section *shall not be detained* by the Attorney General on the basis of the alien's

immigration status in the United States.” (emphasis added). There is no exception to this rule provided in the statute.

83. Thus, Petitioners’ detention violates Section 1254a, and he is entitled to immediate release from custody.

## **COUNT II**

### **VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE U.S. CONSTITUTION**

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

85. The government may not deprive a person of life, liberty, or property without due process of law. 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.” *See generally Reno v. Flores*, 507 U.S. 292 (1993); *Zadvydas v. Davis*, 533 U.S. 678 (2001); *Demore v. Kim*, 538 U.S. 510 (2003).

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

87. Petitioners’ detention violates the Due Process Clause because it is not rationally related to any immigration purpose; because it is not the least restrictive mechanism for accomplishing any legitimate purpose the government could have in imprisoning Petitioner; and because it lacks any statutory authorization.

88. The government’s detention of Petitioner therefore violates due process and he should be released immediately, or in the alternative, with a bond redetermination hearing to determine whether he is a flight risk or danger to others.

## **COUNT III**

### **VIOLATION OF THE IMMIGRATION AND NATIONALITY**

**ACT – 8 U.S.C. § 1226(a)**

89. Petitioners reallege and incorporate by reference each and every allegation contained above.
90. 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 without inspection and have been residing in the United States after being released and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.
91. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates the INA.

**COUNT IV**

**VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT –  
ARBITRARY AND CAPRICIOUS AGENCY ACTION**

92. Petitioner re-alleges and incorporates by reference the preceding paragraphs as though fully set forth herein.
93. The Administrative Procedure Act (“APA”), 5 U.S.C. § 706(2), requires courts to “hold unlawful and set aside” agency action that is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. An agency acts arbitrarily and capriciously when it fails to examine relevant factors, ignores important aspects of the problem, departs from settled practice without reasoned explanation, or treats discretion as categorically unavailable where Congress has not so provided. *Judulang v. Holder*, 565 U.S. 42, 53–55 (2011).

94. Petitioner challenges DHS's independent agency action in implementing and applying a blanket detention policy that treats *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), as eliminating all meaningful individualized custody discretion and review.
95. The Department of Homeland Security has acted arbitrarily and capriciously by continuing to detain Petitioner without any individualized custody assessment or reasoned explanation.
96. Respondents have also failed to provide a reasoned explanation for its abrupt departure from decades of settled administrative practice, during which noncitizens in Petitioner's posture routinely received individualized custody determinations and were considered for release under supervision or bond. Such an unexplained reversal of course is arbitrary and capricious under the APA. *Judulang*, 565 U.S. at 55.
97. Habeas relief is warranted to remedy this unlawful agency conduct. Petitioner respectfully requests that this Court order his immediate release or, in the alternative, direct DHS to conduct a prompt, individualized, and reasoned custody determination consistent with the Administrative Procedure Act, the Immigration and Nationality Act, and governing constitutional principles.

**PRAYER FOR RELIEF**

98. WHEREFORE, Petitioner prays that this Court grant the following relief:
- a. Assume jurisdiction over this matter;
  - b. Order Respondents to show cause why the writ should not be granted within three days as required by 28 U.S.C. 2243;
  - c. Declare that the actions of Respondents as set forth in this Petition violate the Due Process Clause of the Fifth Amendment, of the United States Constitution, 28

- U.S.C. § 2241, the APA, and the INA; declare that Petitioner's detention violates the Immigration and Nationality Act, and specifically 8 U.S.C. 1254a;
- d. Grant a writ of habeas corpus ordering Respondents to immediately release Petitioner from custody and enjoin Petitioners from further detaining Petitioner so long as the December 10 Order remains in effect;
  - e. Alternatively, issue a writ of habeas corpus requiring that Respondents release Petitioner or provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) within 7 days in which DHS bears the burden of establishing the necessity of Petitioner's continued detention and considers alternatives to detention that could mitigate flight risk;
  - f. Enjoin Respondents from denying Petitioner's bond under U.S.C. § 1225(b)(2);
  - g. Enjoin the Respondents from transferring Petitioner to another detention facility;
  - h. 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
  - i. Grant any other and further relief that this Court deems just and proper.

DATED this 16th of February 2026.

Respectfully submitted,

/s/ Oscar Jesus Mendoza Esq.

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**VERIFICATION PURSUANT TO 28 U.S.C. § 2242**

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

Dated this 16th of February 2026.

/s/ Oscar Jesus Mendoza Esq.

Oscar Jesus Mendoza