

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JORGEL ALEXANDER AGUDELO SILVA,

Petitioner,

v.

Case No.

RAUL MALDONADO, JR., Warden
Brooklyn Metropolitan Detention
Center, KRISTI NOEM, Secretary, U.S.
Department of Homeland Security;
TODD LYONS, Director, U.S. Immigration
and Customs Enforcement; KENNETH
GENALO, Field Office Director, New York
Immigration and Customs Enforcement,

Respondents.

**PETITION FOR
WRIT OF HABEAS CORPUS**

Petitioner, Jorgel Alexander Agudelo Silva (Jorgel) through counsel files this Petition for Writ of Habeas Corpus and respectfully requests that this Court issue a Writ of Habeas Corpus. In support, the Petitioner states:

I. INTRODUCTION

1. The Petitioner, by and through undersigned counsel, hereby file this Petition for a Writ of Habeas Corpus in order to secure their release from unlawful detention.

2. The Respondents detained Jorgel while he was on his way to a local mall to purchase some items for a birthday celebration. He was detained on February 28, 2026.

3. 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 mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible for a bond reconsideration before an immigration judge. 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. The challenged policy subjects millions of noncitizens to mandatory prolonged detention without the opportunity for release on bond, no matter how long they have resided within the country. “Immigration Appeals Court

Expands Mandatory Detention for Millions, Politico” (Sept 5, 2025 at 8:44 p.m.

ET), Josh Gerstein & Kyle Cheney,

<https://www.politico.com/news/2025/09/05/immigration-mandatory-detention-00548660>

4. 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 mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and, therefore, ineligible to be released on bond by an immigration judge.

5. Petitioner’s detention on this basis violates the plain language of the Immigration and Nationality Act of 1952 (INA). INA § 1225(b)(2)(A) does not apply to individuals like Petitioner who previously entered and have now been residing in the United States for over two years. Instead, such individuals are subject to a different statute, INA § 1226(a), that allows for review by an immigration judge who can decide whether to 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 admitted or paroled.

6. The Petitioner is not challenging the execution of a removal order before this Court. There is no removal order in this case. The Petitioner is

challenging his unconstitutional detention under 8 U.S.C. §1225(b).

7. The Respondents' actions are not only contrary to law and unconstitutional but have also inflicted extreme emotional distress on the Petitioner who was detained without notice and reason.

8. 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.

9. Immediate release is the only viable remedy in this case. A bond hearing is not an adequate remedy because immigration court hearings lack due process and are not being handled by neutral arbitrators.

10. Accordingly, Petitioner seeks a writ of habeas corpus requiring that they be released immediately.

II. JURISDICTION

11. This Court has habeas corpus jurisdiction pursuant to 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1346 (original jurisdiction) 28 U.S.C. §2201, 28 U.S.C. §2241 et seq., Art. I § 9, cl. 2 of the United States Constitution (Suspension Clause), 28 U.S.C. § 1343; 28 U.S.C. § 1361; and 5 U.S.C. § 702, and common law.

12. This action arises under the Fourth and Fifth Amendments of the United States Constitution and the Immigration and Nationality Act (INA).

13. Federal district courts have jurisdiction to hear habeas claims by noncitizens challenging the lawfulness or constitutionality of DHS conduct. Federal courts are not stripped of jurisdiction under 8 U.S.C. § 1252. See e.g., *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

14. This Court has jurisdiction under the Suspension Clause to review the actions of the executive branch's enforcement of the immigration laws if those actions violate the Constitution by depriving Petitioner of due process or other constitutional rights. Compare Suspension Clause with 8 U.S.C. § 1252(g); see also *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999). The Suspension Clause protects the right to the writ of habeas corpus where, as here, no adequate or effective alternative remedy exists. See *Boumediene v. Bush*, 553 U.S. 723 (2008).

III. VENUE

15. Venue lies in the Eastern District of New York, the judicial district in which the Petitioner is detained.

16. The Petitioner is in the custody and control of Respondents and their agents.

IV. PARTIES

17. Jorgel Alexander Agudelo Silva is a citizen of Venezuela who

fled the communist dictatorship there seeking refuge in the United States.

18. Raul Maldonado Jr. is the Warden of the Brooklyn MDC where the Petitioner is currently detained. He is being sued in his official capacity.

19. Kristi Noem is the Secretary of the U.S. Department of Homeland Security (DHS). She is generally charged with enforcement of the Immigration and Nationality Act and is further authorized to delegate such powers and authority to subordinate employees of the DHS and its various divisions. 8 USC §1103(a). She is being sued in her official capacity.

20. Todd Lyons is the Acting Director of Immigration and Customs Enforcement (ICE) and is responsible for the administration of the detention and removal of aliens in the United States. He is being sued in his official capacity.

21. Kenneth Genalo is the Director of the New York Field Office of the Immigration and Customs Enforcement (ICE - NY). He is responsible for the detention and removal of aliens within the New York District. He is being sued in his official capacity.

V. FACTS

22. Jorgel is a citizen of Venezuela who fled the communist dictatorship of that country. He entered the U.S. October 2, 2022, and on October 3, 2022, Jorgel was paroled into the U.S. (Ex. A – Parole) He was paroled into the U.S. because the Respondents did not find him to be a flight risk or a danger to the community.

23. Jorgel filed a timely application for asylum because of the persecution he suffered in Venezuela. (Ex. B – Asylum Receipt) He also applied for Temporary Protected Status (TPS) which he was unable to renew due to the termination of TPS for Venezuelans which is currently the subject of litigation before the courts. (Ex. C – TPS Approval).¹

24. He applied for work authorization and was approved. His work authorization is valid through November 12, 2028. (Ex. D – Work Authorization Approval).

25. Petitioner was on his way to a mall to purchase some items for his birthday party with whom he was celebrating with a friend visiting from Florida who was also apprehended by ICE at the same time as Petitioner. The Respondents blocked their vehicle and detained them immediately. No reason was provided nor was any opportunity given to challenge this detention.

26. Petitioner has a pending asylum application. He has valid work authorization provided by the Respondents. He is gainfully employed and contributing member of his community.

27. Without relief from this court, he faces the prospect of months, or even years, in immigration custody.

¹ TPS for Venezuelans is currently the subject to litigation. See, *National TPS Alliance v. Noem*, 773 F. Supp. 3d 807 (N.D. Cal. 2025) *Noem v. National TPS Alliance*, 606 U. S. ____ (2025)

VI. APPLICABLE LAW

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

29. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an IJ. 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).

30. 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).

31. 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).

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

33. 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.

34. Section 1226(a) was most recently amended earlier this year by the

Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025). The Laken Riley Act created additional exceptions to § 1226 and authorized mandatory detention for certain categories of noncitizens under § 1226(c). See Pub. L. No. 119-1, 139 Stat. 3 (2025); 8 U.S.C. § 1226(c). Specifically, § 1226(c)(1)(E) (enacted by the Laken Riley Act) requires mandatory detention for people who were charged as being (1) inadmissible under § 1182(a)(6)(A)(i) (the inadmissibility ground for entry without inspection) or (a)(7) (the inadmissibility ground for lacking valid documentation to enter the U.S.) and who (2) have been arrested, charged with, or convicted of certain crimes not relevant here. 8 U.S.C. § 1226(c)(1)(E). The Laken Riley amendments otherwise continued to authorize discretionary detention of noncitizens charged with being inadmissible who do not fall into those enumerated exceptions.

35. 8 U.S.C. § 1225(a)] Inspection.-- 235(a)(1) [1225(a)(1)] Aliens treated as applicants for admission.--An alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters) shall be deemed for purposes of this Act an applicant for admission. See also, *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018) (explaining that 8 U.S.C. § 1225(b)(2)'s mandatory detention scheme applies to noncitizens "seeking admission into the United States.")

36. 8 U.S.C. § 1225(b)(1) applies only to certain aliens who are inadmissible

into the United States because they either lack valid entry documents or have attempted to procure their admission through fraud or misrepresentation. The statute generally permits the government to summarily remove those aliens if they are arriving in the United States. This is otherwise known as expedited removal. The statute also authorizes, but does not require, the government to apply this procedure to aliens who are inadmissible on the same grounds if they have been physically present in the country for less than two years.

37. A warrant is not required for an arrest pursuant to 8 U.S.C. §1225. This section grants immigration officers the power to detain aliens who do not appear clearly entitled to admission, allowing for their examination and detention for further inquiry without a warrant. The detention authority under 8 U.S.C. §1225 is automatic and mandatory and therefore no warrant exists for this type of detention. “An applicant for admission who is arrested and detained without a warrant while arriving in the United States, whether or not at a port of entry, and subsequently placed in removal proceedings is detained under section 235(b) of the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1225(b) (2018)” *Matter of Q-Li*, 29 I&N Dec. 66 (BIA 2025).

38. 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an immigration judge. See 8 U.S.C. § 1229(a). Individuals in Section 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).

39. This section requires a warrant because once the person has been in the U.S. for over two years, the government must have some probable cause to arrest that person, and this must be spelled out in the warrant. See, 8 U.S.C. § 1226(a).

40. The Court has broad, equitable authority under the habeas statute, 28 USC 2241, 2243 and the common law, to dispose of Petitioner's case as law and justice require, based on the facts and circumstances of this case, in order to remedy Petitioner's unlawful detention.

41. The Court should exercise this authority to grant Petitioner's habeas corpus petition and to fashion any and all additional relief, necessary to effectuate their expeditious release from unlawful detention. In the absence of such relief, Petitioner will continue to suffer irreparable harm.

42. The Due Process Clause provides that no person shall "be deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V. In this case there has been absolutely no due process of law.

VII. IMMIGRATION BOND HEARINGS

43. If the alien is eligible for bond, the Immigration Judge considers whether the alien's release would pose a danger to property or persons, whether the alien is likely to appear for further immigration proceedings, and whether the alien is a

threat to national security. See, EOIR Policy Manual Part II - OCIJ Immigration Court Practice Manual - Bond Proceedings 8.3 (e)

<https://www.justice.gov/eoir/policy-manual-eoir/part-II/icpm/chapter-8-3>

44. In *Matter of Patel*, 15 I&N Dec. 666 (BIA 1976), the Board of Immigration Appeals (BIA) held that a person generally should not be detained or required to post bond except on a finding that he is a threat to the national security, or that he is a poor bail risk. In that case, the BIA found that the person's visa overstay and subsequent denial of an immigration petition was insufficient to deny bond where he had a stable address, employment for approximately two years and had a U.S. citizen child. *Id.*

45. The standards both in BIA caselaw and the Respondents' own policies require a determination that a person is either a flight risk, a danger to the national security, or a danger to society.

46. Bond proceedings in immigration courts today are not adhering to these standards. Rather, the rationale in recent immigration bond cases does not seem to be related to any legitimate flight risk or danger to the community concerns. Evidence is not considered in its totality. Due process is sorely lacking in immigration bond proceedings. This includes current bond hearings after a habeas grants. (See Ex. E – Declaration of Jorge E. Artieda) (Ex. F – Declaration of Lawrence O. Burman, former Immigration Judge)

47. Bond hearings do not meet due process and are just held to facially

comply with habeas orders. “Judges keep ordering immigration hearings — but say the results are often a sham” Politico, Kyle Cheney 03/06/2026

<https://www.politico.com/news/2026/03/06/immigration-case-hearings-judges-00815660>

48. Therefore, immediate release from detention is the most appropriate relief in Petitions for Writ of Habeas Corpus.

VIII. EXHAUSTION OF ADMINISTRATIVE REMEDIES

49. There is no applicable statute or rule that mandates administrative exhaustion. However, the court could mandate prudential exhaustion. But even if a court would ordinarily enforce prudential exhaustion, it may still choose to waive such exhaustion. For example, when the “legal question is fit for resolution and delay means hardship,” a court may choose to decide the issues itself. *Shalala v. Ill. Council on Long Term Care ,Inc.*, 529 U.S. 1, 13 (2000) (citation omitted).

50. In this case, there are no administrative remedies to exhaust since the Board of Immigration Appeals (BIA) has issued a precedent decision stating that people like the Petitioner are subject to mandatory detention. See, *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). This decision binds all immigration judges. There is no avenue for administrative review.

51. Petitioner faces substantial hardship if the Court declines to address this issue. The deprivation of liberty, by itself, constitutes a serious hardship. Courts

have recognized that exhaustion requirements may be excused when an administrative remedy operates under “an unreasonable or indefinite timeline.”

McCarthy v. Madigan, 503 U.S. 140, 147 (1992).

CAUSES OF ACTION

FIRST CLAIM FOR RELIEF VIOLATION OF DUE PROCESS FIFTH AMENDMENT OF THE US CONSTITUTION

52. Petitioner realleges the foregoing paragraphs as if set forth fully herein.

53. The Fifth Amendment of the Constitution guarantees that civil detainees, including all immigrant detainees, may not be subjected to punishment. The federal government also violates substantive due process when it subjects civil detainees to cruel treatment and conditions of confinement that amount to punishment.

54. 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.” *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001)

55. The Supreme Court has long made clear that when the government seeks to deprive an individual of a “particularly important individual interest[,]” it must bear the burden of justifying this deprivation by clear and convincing evidence. *Addington v. Texas*, 441 U.S. 418, 424 (1979). After being paroled into

the U.S., over two years later Petitioner was suddenly detained without explanation. He has a significant interest at stake, and a “clear and convincing” evidence standard provides the appropriate level of procedural protection. *Id.* at 423. The Respondents actions in this matter violate the Petitioner’s procedural due process rights. See, *Iza v. Larocco*, 2:25-cv-6915 (NJC) (E.D. N.Y. Jan 05, 2026) (“Contrary to Respondents’ contentions, Mr. Iza-as a noncitizen who was paroled into the interior of the United States, has continuously resided in New York for more than three years, has developed deep community ties, and was granted five years of work authorization from 2024 to 2029-has a liberty interest in being free from detention that is absent any procedural due process protections.”)

56.To comport with substantive due process, civil immigration detention must bear a reasonable relationship with its two regulatory purposes— (1) to ensure the appearance of noncitizens at future hearings and (2) to prevent danger to the community pending the completion of removal. *Zadvydas*, 533 U.S. at 690-91. The Respondents have not even attempted to show that the Petitioner’s detention is required to ensure his appearance at immigration proceedings or that he is a danger to the community. See, *Rodriguez-Acurio v. Almodovar*, ___ F.Supp.3d ___, No. 2:25-cv-6065, 2025 WL 3314420, at *8-11 (E.D.N.Y. Nov. 28, 2025)

57. Petitioner is not “deportable” insofar as he has a pending asylum application. 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”). Petitioner’s on-going imprisonment obviously cannot satisfy that rigorous standard.

58. The Respondents through their actions believe that they can detain Petitioner without affording him procedural and/or substantive due process. Petitioner’s detention has no reasonable relationship to the regulatory purposes of civil detention.

**SECOND CLAIM FOR RELIEF
VIOLATION OF FOURTH AMENDMENT**

59. Petitioner realleges the foregoing paragraphs as if set forth fully herein.

60. The Fourth Amendment protection against “unreasonable searches and seizures” is a protection against “arrest without probable cause.” *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968).

61. In this case, the Respondents have detained Petitioner without probable cause and in violation of the Fourth Amendment of the U.S. Constitution. This constitutes an unreasonable seizure.

THIRD CLAIM FOR RELIEF
VIOLATION OF THE
IMMIGRATION AND NATIONALITY ACT

62. Petitioner realleges the foregoing paragraphs as if set forth fully herein.

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

64. Even before ICE and the BIA introduced these nationwide policies, IJs in the Tacoma, Washington, immigration court stopped providing bond hearings for persons who entered the United States without inspection and who have since resided here. There, 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*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025).

65. Subsequently, court after court, including in this district, has adopted the same reading of the INA's detention authorities and rejected ICE and EOIR's new interpretation. See, e.g., *Alvarez Ortiz v. Freden*, 2025 WL 3085032 (W.D.N.Y. Nov. 4, 2025); *Y- C- v. Genalo*, No. 25-cv-06558, 2025 WL 3653496

(E.D.N.Y. Dec. 17, 2025); *Crespo Tacuri v. Genalo*, No. 25-cv-06896, 2026 WL 35569 (E.D.N.Y. Jan. 6, 2026)." *Yumbra v. Maldonado*, 26-CV-00594 (NCM) (E.D. N.Y. Feb 10, 2026) *Sanchez Alvarez v. Noem*, No. 25-1090, 2025 WL 2942648 (W.D. Mich. Oct. 17, 2025); *Rodriguez Carmona v. Noem*, No. 25-1131, 2025 WL 2992222 (W.D. Mich. Oct. 24, 2025); *Contreras-Cervantes v. Raycraft*, No. 25-CV-13073 (E.D. Mich. Oct. 17, 2025); *Lopez-Campos v. Raycraft*, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Pizarro Reyes v. Raycraft*, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025; *Lopez de Leon v. Harlingen Field Office Immigration and Customs Enforcement, et. al.* No. 5:25-cv-00165, (S.D.Tx. Nov. 3, 2025; *Buenrostro-Mendez*, 2025 WL 2886346, at *3 (collecting cases); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), report and recommendation adopted, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *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); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug.

19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d ----, 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *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); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); see also, e.g., *Palma Perez v. Berg*, No. 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).

66. Courts have uniformly rejected DHS’s and EOIR’s new interpretation because it defies the INA.

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 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 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), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

69. The application of § 1225(b)(2) to Petitioner mandates his continued unlawful detention and violates the INA and the U.S. Constitution.

IX. CONCLUSION

THEREFORE, the Petitioner respectfully requests that this Court:

- a. Issue a Writ of Habeas Corpus on the ground that the continued detention of Petitioner violates the Due Process Clause and order their immediate release;
- b. Enjoin the Respondents from transferring the Petitioner outside of the Court's jurisdiction;
- c. Enjoin the Respondents from removing the Petitioner from the United States while these proceedings are pending;
- d. Find that the Respondents have acted in bad faith in violating the U.S.

Constitution and the INA;

e. Award Petitioner their costs and reasonable attorneys' fees in this action.

f. Any other relief the Court deems appropriate.

Respectfully submitted:

s/Caridad Pastor

Caridad Pastor (Mi P43551)

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