

Vital D'Carpio, CA Bar#160321
vitallaw@gmail.com
Law Offices of Vital D'Carpio, PLLC
2677 N. Main St., Suite 1080
Santa Ana, CA 92705
Tel 714-953-2732
Fax 657-212-9919

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

Alfredo Oswaldo Mejia-Lopez

A 

Petitioner,

v.

Juan Agudelo, in his official capacity as
Field Office Director of the Miami Field
Office of U.S. Immigration and Customs
Enforcement, Enforcement and Removal
Operations;

Todd Lyons, in his official capacity as
Acting Director and Senior Official
Performing the Duties of the Director of
U.S. Immigration and Customs
Enforcement;

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

Respondents.

Case No.: _____

**PETITIONER'S WRIT FOR
HABEAS CORPUS**

INTRODUCTION

1. This is a Writ for Habeas Corpus. Petitioner Alfredo Oswaldo Mejia-Lopez, is a 40-year-old native and citizen of Guatemala who Respondents have detained since March 23, 2026 at the Florida Soft Side South Detention Facility located at 54575 Tamiami Trail E, Ochopee, Florida 33141. A Notice to Appear will be filed with the Immigration Court charging him with removability under 8 U.S.C. § 1182(a)(6)(A)(i)[present without admission or parole][and/or 8 U.S.C. § 1182(a)(7)(i)(I)].

2. Petitioner is being unlawfully detained because the Department of Homeland Security (DHS) and the Executive Office for Immigration Review (EOIR) of the Department of Justice (DOJ) have erroneously concluded he is subject to mandatory detention, and not eligible for bond.

3. On July 8, 2025, DHS issued a directive instructing all Immigration and Customs Enforcement (ICE) employees to consider anyone inadmissible under 8 U.S.C. §1182(a)(6)(A)(i)—i.e., those, like Petitioner, who are alleged to have 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. Consistent with this policy, DHS and EOIR have denied Petitioner release from immigration custody.

4. The Executive Office for Immigration Review (EOIR) of the Department of Justice (DOJ) has recently affirmed that view. In a published decision, dated September 5, 2025, the Board of Immigration Appeals held that “Immigration Judges lack authority to hear bond requests or to grant bond to [noncitizens] who are present in the United States without admission.” *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 229 (BIA 2025)(“no admission, no bond.”).

5. Though a District Court in California has certified a bond-eligible class, of which Petitioner is a member, it is notable that on January 13, 2026, the Executive Office for Immigration Review [EOIR] issued guidance to its Immigration Judges

EXHAUSTION

19. No statutory requirement of administrative exhaustion applies to Petitioner's case. Moreover, the judicially created "general rule that parties exhaust prescribed administrative remedies before seeking relief from the federal courts" does not apply to Petitioner's present challenge, as there are no prescribed administrative remedies to which Petitioner could resort. *McCarthy v. Madigan*, 503 U.S. 140, 144–45 (1992), superseded by statute on other grounds as recognized in *Woodford v. Ngo*, 548 U.S. 81 (2006).

20. In particular, DHS has taken the position that noncitizens like Petitioner who entered without inspection are subject to mandatory detention under 8 U.S.C. § 1225, and the Executive Office for Immigration Review has affirmed that view. In a published decision, the Board of Immigration Appeals recently held that "Immigration Judges lack authority to hear bond requests or to grant bond to [noncitizens] who are present in the United States without admission." *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Under the BIA's interpretation, Petitioner is ineligible for bond as a noncitizen who entered the United States without inspection. Accordingly, there are no administrative remedies that Petitioner could exhaust before seeking habeas relief. *See Singh v. Lewis*, No. 4:25-CV-96-RGJ, 2025 WL 2699219, at *3 (W.D. Ky. Sept. 22, 2025) ("[t]he United States has made clear their position on Section 1225, and it is being applied at all levels within the DHS. Therefore, it is unlikely that any administrative review would lead to the United States changing its position and precluding judicial review"); *Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, 2025 WL 2496379, at *4 (E.D. Mich. Aug. 29, 2025) ("Because exhaustion would be futile and unable to provide [petitioner] with the relief he requests in a timely manner, the court waives administrative exhaustion and will address the merits of the habeas petition.").

21. Further, neither an immigration judge nor the Board of Immigration Appeals can rule on a Petitioner's constitutional claims. *See Matter of R-A-V-P-*, 27

1 I. & N. Dec. 803, 804 n.2 (B.I.A. 2020) (holding that IJs and the BIA lack any
 2 authority to consider the constitutionality of the statutes or regulations governing
 3 immigration detention that they administer and are bound to follow); *Matter of C--*,
 4 20 I. & N. Dec. 529, 532 (B.I.A. 1992) (“[I]t is settled that the immigration judge
 5 and this Board lack jurisdiction to rule upon the constitutionality of the Act and the
 6 regulations.”); *see also Gonzalez v. O’Connell*, 355 F.3d 1010, 1017 (7th Cir. 2004)
 7 (noting that “the BIA has no jurisdiction to adjudicate constitutional issues”).

8 22. Further, despite the recently certified class action in *Maldonado Bautista*
 9 *et al. v. Ernesto Santacruz Jr. et al.*, No. 5:25-CV-01873-SSS-BFM, 2025 WL
 10 3288403 (C.D. Cal. Nov. 25, 2025), the Executive Office for Immigration Review
 11 [EOIR] issued guidance to its Judges that *Maldonado Bautisa*, is not a nationwide
 12 injunction and did not vacate, stay, or enjoin the Board of Immigration Appeals
 13 holding in *Yajure Hurtado*. Therefore, the court should find administrative
 14 exhaustion would be futile. *See Vasquez- Rodriguez v. Garland*, 7 F.4th 888, 896
 15 (9th Cir. 2021) (“where the agency's position appears already set and recourse to
 16 administrative remedies is very likely futile, exhaustion is not required.”). BIA
 17 decisions are binding on immigration judges, and *Yajure Hurtado* thus precludes an
 18 IJ from finding jurisdiction over noncitizens like Petitioner to hold a custody
 19 redetermination hearing. Therefore, judicial intervention enjoining Respondents
 20 from preventing Petitioner from having a bond hearing pursuant to the holding in
 21 *Yajure Hurtado* is necessary to enable Petitioner to avail himself of his
 22 administrative remedies.

23 23. Therefore, the court should consider the merits of this Petition.

24 LEGAL FRAMEWORK

25 *I. Detention Authority and Respondent’s Efforts to Expand Mandatory 26 Detention*

27 24. The Immigration and Nationality Act [INA] prescribes three basic forms
 28 of detention for the vast majority of noncitizens in removal proceedings.

1 25. First, 8 U.S.C. § 1226 authorizes the permissive detention of noncitizens
2 “already in the country.” *See Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018). 8
3 U.S.C. § 1226(a) “sets out the default rule: The Attorney General may issue a
4 warrant for the arrest and detention of a[] [noncitizen] ‘pending a decision on
5 whether the [noncitizen] is to be removed from the United States.’” *Id.* at 288
6 (quoting § 1226(a) (emphasis added)).

7 26. Individuals in Section 1226(a) detention are generally entitled to a bond
8 hearing at the outset of their detention. *See* § 1226(a)(2); 8 C.F.R. §§ 1003.19(a),
9 1236.1(c)(8), (d)(1); *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239, 1247
10 (W.D. Wash. 2025) (“those detained under Section 1226(a) are entitled to a bond
11 hearing before an [immigration judge] at any time before entry of a final removal
12 order.”).

13 27. Section 1226(c) “carves out a statutory category” of noncitizens from
14 Section 1226(a) for whom detention is mandatory, comprised of individuals who
15 have committed certain “enumerated ... criminal offenses [or] terrorist activities.”
16 *Jennings*, 583 U.S. at 289 (citing § 1226(c)(1)). Among the individuals carved out
17 and subject to mandatory detention are certain categories of “inadmissible”
18 noncitizens. § 1226(c)(1)(A), (D), (E). Reference to such inadmissible noncitizens
19 makes clear that, by default, people who are applicants for admission but
20 encountered in the interior are afforded a bond hearing under subsection 1226(a).
21 Courts have recently confirmed this understanding of Section 1226. *See Rodriguez*
22 *Vazquez*, 779 F. Supp. 3d at 1257 (citing *Shady Grove Orthopedic Assocs., P.A. v.*
23 *Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)) (“When Congress creates ‘specific
24 exceptions’ to a statute’s applicability, it ‘proves’ that absent those exceptions, the
25 statute generally applies.”); *see also, e.g., Gomes v. Hyde*, No. 1:25-CV11571-
26 JEK, 2025 WL 1869299, at *6 (D. Mass. July 7, 2025) (“inadmissibility on one of
27 the three grounds specified in Section 1226(c)(1)(E)(i) is not by itself sufficient to
28 except [a noncitizen] from Section 1226(a)’s discretionary detention framework”).

1 28. Second, the INA provides for mandatory detention of certain categories of
2 noncitizens “seeking entry into the United States” under 8 U.S.C. § 1225(b).
3 *Jennings*, 583 U.S. at 297; see § 1225(b) (“Inspection of applicants for admission”).
4 In *Jennings*, the Supreme Court explained that this mandatory scheme applies “at
5 the Nation’s borders and ports of entry, where the Government must determine
6 whether a[] [noncitizen] seeking to enter the country is inadmissible.” *Jennings*, 583
7 U.S. at 287 (emphasis added). Noncitizens subject to mandatory detention under
8 Section 1225 may not be released except “for urgent humanitarian reasons or
9 significant public benefit” under the parole authority provided by 8 U.S.C. §
10 1182(d)(5)(A). *See id.* at 300.

11 29. Section 1225 has two subparts requiring mandatory detention: subsection
12 (b)(1) mandates detention of noncitizens charged with enumerated grounds of
13 inadmissibility and placed in expedited removal proceedings, and subsection (b)(2)
14 mandates detention of recently arrived noncitizens seeking entry at a border or port
15 of entry. *See infra*.

16 30. Third, the INA provides for detention of noncitizens who have been
17 ordered removed, including individuals in withholding-only proceedings, *see* 8
18 U.S.C. § 1231(a)–(b).

19 31. This case concerns whether Petitioner may be detained with a right to a
20 bond hearing pursuant to Section 1226(a) (as the law requires) or whether he falls
21 within mandatory detention as an “arriving alien” under Section 1225(b)(2) as DHS
22 policy erroneously requires.

23 32. Respondents have recently taken various steps seeking to expand their use
24 of mandatory detention under Section 1225(b)(2) beyond its plain language.

25 33. On July 8, 2025, ICE, “in coordination with” DOJ, announced a new
26 policy that rejected well-established understanding of the statutory framework and
27 reversed decades of practice. *See* U.S. Immigration and Customs Enforcement,
28 Interim Guidance Regarding Detention Authority for Applicants for Admission

(July 8, 2025), <https://www.aila.org/ice-memo-interimguidance-regarding-detention-authority-for-applications-for-admission>.

34. The new policy 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 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.

35. On September 5, 2025, the Board of Immigration Appeals (BIA) published a decision adopting this same position. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). That decision holds that all noncitizens who entered the United States without admission or parole are considered applicants for admission and are ineligible for immigration judge bond hearings. On January 13, 2026, Respondents of the Executive Office for Immigration Review [EOIR] issued guidance to its Judges that *Maldonado Bautisa* [the California Class Action certification] is not a nationwide injunction and did not vacate, stay, or enjoin the Board of Immigration Appeals holding in *Yajure Hurtado*.

II. Respondents’ Policy on Section 1225(b)(2) Is Incorrect

36. Respondents’ policy that all undocumented noncitizens who entered without inspection are considered applicants for admission and subject to mandatory detention under Section 1225(b)(2)(A) is incorrect. Statutory text, statutory framework, Congressional intent, longstanding practice of the agency, and decisions of many federal courts across the nation – including this one – all limit Section 1225(b)(2)’s scope to recently arrived noncitizens seeking admission at a border or port of entry.

a. Statutory Text

37. The text of Section 1225, along with its placement in the overall detention scheme of the INA, make clear that the terms “applicant for admission” and “seeking

admission” in Section 1225(b)(2) do not include individuals who have entered without inspection and are apprehended when already inside the United States.

38. Section 1225 is titled: “Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing.” (emphasis added). As courts have recognized, “[t]he added word of ‘arriving’ indicates that the statute governs ‘arriving’ noncitizens, not those present already.” *Beltran Barrera v. Tindall*, No. 3:25-CV-541-RGJ, 2025 WL 2690565, at *4 (W.D. Ky. Sept. 19, 2025) (citing *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425, at *5 (E.D. Mich. Sept. 9, 2025)). This limitation is particularly clear when compared to Section 1226’s general title: “Apprehension and detention of aliens.”

39. Further, Section 1225(b)(2)’s specific subheading, “Inspection of Other Aliens,” subsection 1225(b)(2)(B)’s mention of “crewm[e]n” and “stowaway[s],” and subsection 1225(b)(2)(C)’s use of the active language “arriving,” reinforce the limited scope of Section 1225(b)(2)’s applicability to those who have recently arrived at a border or port of entry.

40. Finally, the term “seeking” in “seeking admission” “implies action – something that is currently occurring, and in this instance, would most logically occur at the border upon inspection.” *Lopez-Campos*, 2025 WL 2496379, at *6 (E.D. Mich. Aug. 29, 2025); *see also Beltran Barrera*, 2025 WL 2690565, at *4. Noncitizens who are present in the country for years are not “seeking admission.” *Lopez-Campos*, at *6; *Beltran Barrera*, at *4.

b. Statutory Framework

41. The statutory framework further supports that Section 1225(b)(2) does not apply to noncitizens, like Petitioner, who has lived in the United States for years and who was apprehended and placed in detention while residing within the United States.

42. The INA’s entire framework is premised on Section 1225 governing detention of “arriving [noncitizens]” while Section 1226 “applies to [noncitizens]

1 already present in the United States.” *Jennings*, 583 U.S. at 288, 301; *see also Lopez*
2 *Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588, at *8 (S.D.N.Y.
3 Aug. 13, 2025) (“[T]he line historically drawn between sections 1225 and 1226,
4 which makes sense of their text and the overall statutory scheme, is that section 1225
5 governs detention of non-citizens ‘seeking admission into the country,’ whereas
6 section 1226 governs detention of non-citizens ‘already in the country.’”) (*citing*
7 *Jennings*, 583 U.S. at 288-89); *Martinez v. Hyde*, 2025 WL 2084238, at *8 (D. Mass.
8 July 24, 2025) (“The idea that a different detention scheme would apply to non-
9 citizens ‘already in the country,’ as compared to those ‘seeking admission into the
10 country,’ is consonant with the core logic of our immigration system”) (*citing*
11 *Jennings*, 583 U.S. at 289).

12 43. A fundamental principle of statutory construction is that courts must
13 interpret statutes to give meaning to all provisions and avoid reading out or rendering
14 superfluous any single provision. *Corley v. United States*, 556 U.S. 303, 314 (2009)
15 (“one of the most basic interpretive canons . . . [a] statute should be construed so that
16 effect is given to all its provisions, so that no part will be inoperative or superfluous,
17 void or insignificant[.]”). The government’s current reading of Section 1225(b)(2)
18 violates this principle.

19 44. Section 1226(c) includes carve outs for certain categories of inadmissible
20 noncitizens, who would otherwise fall under Section 1226(a), that are instead subject
21 to mandatory detention. 8 U.S.C. § 1226(c)(1)(A), (D), (E). The inclusion of these
22 carve outs in Section 1226(c) indicates that, contrary to Respondents’ interpretation,
23 there are noncitizens who have not been admitted and that are not governed by
24 Section 1225’s mandatory detention scheme. Indeed, if the government’s
25 interpretation were correct, it would render these portions of Section 1226(c)
26 superfluous since those same individuals would already be subject to mandatory
27 detention under Section 1225(b)(2).
28

1 45. The recent amendment to Section 1226(c) confirms this statutory
2 framework. Just this year, Congress passed the Laken Riley Act, which added
3 additional categories of Section 1226(a) carve outs that are now subject to mandatory
4 detention under Section 1226(c). Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3
5 (2025); 8 U.S.C. § 1226(c)(1)(E). Specifically, the Laken Riley Act mandates the
6 detention of noncitizens who are inadmissible under §§ 1182(a)(6)(A) (noncitizens
7 “present in the United States without being admitted or paroled”), 1182(a)(6)(C)
8 (misrepresentation), or 1182(a)(7) (lacking valid documentation) and who have been
9 arrested for, charged with, or convicted of certain crimes. *Id.* If Section 1225(b)(2)
10 were already meant to subject these groups of inadmissible noncitizens to mandatory
11 detention, it would render this portion of the Laken Riley Act redundant. *See Beltran*
12 *Barrera*, 2025 WL 2690565, at *4; *LopezCampos*, 2025 WL 2496379, at *8.

13 *c. Congressional Intent and Longstanding Agency Practice*

14 46. Congressional intent and longstanding historical practice underscore
15 Petitioner’s reading of the statute.

16 47. The current detention system has been in place since the passage of the
17 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996,
18 Pub. L. No. 104–208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–
19 583, 3009–585.

20 48. Following the enactment of the IIRIRA, the Executive Office for
21 Immigration Review drafted new regulations explaining that, in general, people who
22 entered the country without inspection were not considered detained under Section
23 1225 and that they were instead detained under Section 1226(a) and eligible for bond
24 and bond redetermination. *See* 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

25 49. In the decades that followed, most people who entered without inspection
26 and were apprehended inside the United States were detained under Section 1226(a)
27 and received bond hearings, unless their criminal history rendered them ineligible.
28 That practice was consistent with many more decades of prior practice, in which

1 noncitizens who were not deemed “arriving” were entitled to a custody hearing
2 before an immigration judge or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994);
3 see also H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that Section 1226(a)
4 simply “restates” the detention authority previously found at Section 1252(a)).

5 *d. Recent Federal Court Decisions Affirming Petitioner’s Position*

6 50. Numerous federal courts have reached conclusions consistent with
7 Petitioner’s position, with more reaching the same conclusion nearly every day.

8 51. For example, after immigration judges in Tacoma, Washington, stopped
9 providing bond hearings for persons who entered the United States without
10 inspection, the U.S. District Court in the Western District of Washington found that
11 such a reading of the INA is likely unlawful, and that Section 1226(a), not Section
12 1225(b), applies to noncitizens who are not apprehended upon arrival to the United
13 States. *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (March 20, 2025).

14 52. Other courts have reached the same conclusion, rejecting Respondent’s
15 erroneous interpretation of the INA both prior to, and since, ICE implemented its
16 July 8, 2025, interim guidance. *See, e.g., Maldonado Bautista et al. v. Ernesto*
17 *Santacruz Jr. et al.*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3288403 (C.D. Cal.
18 Nov. 25, 2025); *Arrazola-Gonzalez v Noem*, 5:25-cv-01789-ODW-DFM, 2025 WL
19 2379285 (C.D. Cal. Aug. 15, 2025); *Torres Maldonado v. Olson*, et al, Case No. 1:25-
20 cv-12762, ECF No. 16 (N.D. Ill. Oct 24, 2025) (Daniels, J.); *Patel v. Crowley*, No. 25
21 C 11180, 2025 WL 2996787 (N.D.Ill. Oct. 24, 2025) (Cummings, J.); *Sanchez v. Holt*,
22 Case No. 1:25-cv-12453, ECF No. 16 (N.D. Ill. Oct 24, 2025) (Jenkins, J.); *Ochoa*
23 *Ochoa v. Noem, et al*, Case No. 1:25-cv10865, EFF No. 20 (N.D. Ill. Oct. 16, 2025)
24 (Jenkins, J.); *GZT et al v. Smith et al*, Case No. 25- C-12802, ECF No. 14 (N.D. Ill. Oct.
25 21, 2025) (Ellis, J.); *Jose Alejandro v. Olson et al*, 1:25-cv02027-JPH-MKK (S.D. Ind.
26 Oct. 11, 2025); *H.G.V.U. v. Smith*, Case No. 1:25-cv-10931, ECF No. 34 (N.D. Ill. Oct.
27 20, 2025) (Coleman, J.); *Gomes v. Hyde*, 2025 WL 1869299, at *8 (D. Mass. July 7,
28 2025); *Martinez v. Hyde*, 2025 WL 2084238, at *8 (D. Mass. July 24, 2025); *Lopez*

1 *Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588, at *8 (S.D.N.Y. Aug.
2 13, 2025); *Garcia Jimenez v. Kramer*, No. 4:25-cv-03162-JFB-RCC, 2025 WL
3 2374223 (D. Neb. Aug. 14, 2025); *Aguilar Maldonado v. Olson*, No. 25-CV-3142
4 (SRN/SGE), 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Jacinto v. Trump, et al.*,
5 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 (D. Neb. August 19, 2025); *Leal-*
6 *Hernandez v. Noem*, 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025);
7 *Lopez-Campos*, 2025 WL 2496379; *Herrera Torralba v. Knight*, 2:25-cv-03166-
8 RFBDJA, 2025 WL 2581792 (D. Nev. Sept. 5, 2025).

9 53. The BIA's decision in *Yajure Hurtado* on September 5, 2025 has also not
10 impacted the District Courts' decisions rejecting Respondents' position. *See Patel v.*
11 *Crowley*, No. 25 C 11180, 2025 WL 2996787, at *1 (N.D.Ill. Oct. 24, 2025) (finding
12 the decision in *Matter of Yajure Hurtado* unpersuasive for several reasons, including
13 the BIA's inconsistent view, its conflict with implementing regulation, and district
14 courts' overwhelming rejection of its expansive interpretation of 1225(b)); *Patel v.*
15 *Crowley*, No. 25 C 11180, 2025 WL 2996787, at *1 (N.D.Ill. Oct. 24, 2025) (finding
16 the decision in *Matter of Yajure Hurtado* unpersuasive due to BIA's inconsistent
17 view, its conflict with implementing regulation, and district courts' overwhelming
18 rejection of its expansive interpretation of 1225(b)); *Ochoa Ochoa v. Noem et al.*,
19 1:25-cv-10865 (N.D. Ill. Oct. 16, 2025) (rejecting *Matter of Yajure Hurtado* as it is
20 non-binding and unpersuasive under *Loper Bright Enters. v. Raimondo*, 603 U.S.
21 369, 413 (2024) given the BIA's inconsistent views); *Singh v. Lewis*, 2025 WL
22 2699219, at *3 (disagreeing with BIA's analysis and according no deference under
23 *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 413 (2024)); *Beltran Barrera*, 2025
24 WL 2690565, at *5 (same); *Pizarro Reyes v. Raycraft*, 2025 WL 2609425, at *6-8
25 (same); *Sampiao v. Hyde*, 2025 WL 2607924, at *8 n.11 (D. Mass. Sept. 9, 2025)
26 (same); *Aceros v. Kaiser*, No. 25-CV-06924-EMC (EMC), 2025 WL 2637503, at *9
27 (N.D. Cal. Sept. 12, 2025) (same).

III. Petitioner's Detention Violates the Immigration and Nationality Act

54. Petitioner's detention is not authorized under Section 1225(b)(2). As discussed above, mandatory detention under Section 1225(b)(2) applies only to recently arrived noncitizens seeking admission at a border or port of entry, not individuals like Petitioner who entered without inspection, were released or were never encountered, and were later detained inside the country. As such, Petitioner is not subject to mandatory detention under Section 1225(b)(2).

55. Petitioner's detention is not authorized under Section 1226(a), either. As discussed above, Section 1226(a)'s discretionary detention framework requires a bond hearing to make an individualized custody determination based on Petitioner's risk of flight or dangerousness. Here, Respondents have failed to provide such a hearing. Further, there is no information indicating that Petitioner is a flight risk or danger to the community.

56. Lacking any statutory basis for this detention, Respondents must release Petitioner or hold a bond hearing to determine whether he should remain detained.

IV. Due Process Clause

57. Noncitizens are entitled to due process of the law under the Fifth Amendment. *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). To determine whether civil detention violates a noncitizen's Fifth Amendment due process rights, courts apply the three-part test in *Mathews v. Eldridge*, 424 U.S. 319 (1976).

58. Under *Mathews*, courts weigh these three factors: 1) "the private interest that will be affected by the official action;" 2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards;" and 3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." 424 U.S. at 335.

1 *a. Private Interest*

2 59. As to the first Mathews factor, “[t]he interest in being free from physical
3 detention” is “the most elemental of liberty interests.” *Hamdi v. Rumsfeld*, 542 U.S.
4 507, 529, 531 (2004). Petitioner has been detained by Respondents since March 23,
5 2026, despite the fact that he has filed an affirmative claim to asylum, and was issued
6 a work permit in 2019. Respondents have yet to file any Notice to Appear with the
7 Immigration Court. Petitioner’s continued detention prevents him from supporting
8 himself and his family, prevents him from meaningfully assisting his counsel in the
9 presentation of his applications for removal relief, and deprives him of any privacy
10 and freedom of movement.

11 *b. Risk of Erroneous Deprivation*

12 60. As to the second Mathews factor, courts must “assess whether the
13 challenged procedure creates a risk of erroneous deprivation of individuals’ private
14 rights and the degree to which alternative procedures could ameliorate these risks.”
15 *Gunaydin v. Trump*, No. 25-CV-01151 (JMB/DLM), 2025 WL 1459154, at *8 (D.
16 Minn. May 21, 2025). The current procedures cause an erroneous deprivation of
17 Petitioner’s liberty interest in remaining free from detention.

18 61. As discussed above, the statutory text, statutory framework, Congressional
19 intent, the longstanding practice of the agency, and the decisions of many federal
20 courts across the nation leave no doubt that Section 1225(b)(2) applies only to
21 recently arrived noncitizens seeking entry at a border or port of entry, not noncitizens
22 who entered without inspection and were detained inside the country.

23 62. Here, Petitioner was not arriving at a border or port of entry when he was
24 detained, nor was he seeking admission. Instead, Petitioner entered without
25 inspection, and lived in the United States since about 2018, at the age of about 33,
26 and lodged an affirmative I-589 asylum application. He has been issued a work
27 permit, and his asylum application appears to remain pending adjudication before
28

1 USCIS. As such, he is not reasonably subject to mandatory detention under Section
2 1225(b)(2).

3 63. It is clear based on the foregoing that the government's current procedure
4 of subjecting Petitioner to mandatory detention under Section 1225(b)(2) creates a
5 substantial risk of erroneous deprivation of Petitioner's interest in being free from
6 arbitrary confinement.

7 64. Additionally, there are reasonable alternatives available for Respondent to
8 pursue. As discussed above, 8 U.S.C. section 1226(a) applies to noncitizens facing
9 charges of inadmissibility, including noncitizens like Petitioner who entered without
10 inspection, were released or never apprehended, and were later detained while
11 residing inside the country. As such, proper application of the INA's detention
12 scheme allows for the possibility of detaining Petitioner under Section 1226(a), but
13 first requires a bond hearing to make an individualized determination of flight risk,
14 or dangerousness. Such a hearing has not occurred. Without it, the risk of erroneous
15 deprivation of Petitioner's freedom is high. *See Singh v. Lewis*, 2025 WL 2699219,
16 at *9 ("the risk of erroneously depriving him of his freedom is high if the IJ fails to
17 assess his risk of flight or dangerousness.").

18 *c. Government Interest*

19 65. As to the third Mathews factor, the government's interest in maintaining
20 the current procedure is minimal. The new interpretation of Section 1225(b)(2) –
21 that people like Petitioner who have resided in the United States for years are now
22 subject to mandatory detention – flies in the face of the statutory text, statutory
23 framework, Congressional intent, almost three decades of prior practice, and the
24 decisions of federal courts across the nation. Any government interest in public
25 safety or ensuring that Petitioner attend future immigration proceedings would be
26 satisfied through proper application of Section 1226(a), which requires a bond
27 redetermination hearing where an immigration judge will consider Petitioner's
28

individualized facts and circumstances to determine whether he is a danger to the community or a flight risk.

CLAIMS FOR RELIEF

COUNT I - Violation of the Immigration and Nationality Act

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

67. 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 ground of inadmissibility for entering the U.S. without inspection. As relevant here, it does not apply to those who previously entered the country without inspection, and, if issued NTAs, were released without bond, and have been residing in the United States prior to being detained by Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231. Respondents' actions also violate § 1226(a) because, to date, Respondents have refused to consider Petitioner for bond or release on his own recognizance without ever demonstrating that Petitioner is a flight risk or danger to others.

68. The application of § 1225(b)(2) to Petitioner unlawfully mandates Petitioner's continued detention, and violates the Immigration and Nationality Act.

COUNT II - Violation of Due Process

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

70. 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 (2001).

71. Petitioner has a fundamental liberty interest in being free from restraint.

PRAYER FOR RELIEF

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

a. Assume jurisdiction over this matter;

b. Immediately enjoin Respondents from moving any Petitioner outside of the United States or transferring Petitioner to any other federal judicial district.

c. Issue a writ of habeas corpus requiring Respondents release Petitioner or provide a bond hearing before the Immigration Court pursuant to 8 U.S.C. § 1226(a), within five (5) days, in which the government shall bear the burden by clear and convincing evidence of dangerousness or flight risk to justify continued detention;

d. Declare that Petitioner's continued detention violates the Immigration and Nationality Act, and the Due Process Clause of the Fifth Amendment;

e. 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

f. Grant any other relief that this court deems just and just and proper.

Respectfully submitted,

/s/ Vital D'Carpio

Date: March 27, 2026

Vital D'Carpio
Counsel for Petitioner

VERIFICATION

Pursuant to 28 U.S.C. §§ 2242 and 1746, I declare under penalty of perjury that the facts set forth in the foregoing Petition for Habeas Corpus are true and correct based on information available at the time of this filing.

March 27, 2026

/s/ Vital D'Carpio

Vital D'Carpio
Counsel for Petitioner