UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

LUIS DANIEL MARTINEZ VAZQUEZ

Petitioner,

-against-

MARKWAYNE MULLIN, IN HIS OFFICIAL CAPACITY, SECRETARY OF U.S. DEPARTMENT OF HOMELAND SECURITY;

PAMELA BONDI, IN HER OFFICIAL CAPACITY, U.S. ATTORNEY GENERAL;

TODD LYONS, IN HIS OFFICIAL CAPACITY, ACTING DIRECTOR, IMMIGRATION AND CUSTOMS ENFORCEMENT;

BRETT A. BRADFORD, IN HIS OFFICIAL CAPACITY ICE FIELD OFFICE DIRECTOR DETENTION AND REMOVAL;

WARDEN, WARDEN, HOUSTON CONTRACT DETENTION FACILITY (CDF)

Respondents.

PETITION FOR WRIT OF HABEAS CORPUS

Case No. 4:26-cv-2582

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

1. Petitioner, Luis Daniel Martinez-Vazquez ("Mr. Martinez-Vazquez"), is a 39-year-old native and citizen of Mexico.
2. In 2002, Petitioner first entered the United States as a minor, seeking safety from ongoing social persecution and the opportunity to live free from discrimination. Upon arrival, Petitioner resided with his father for approximately four years. During that period, Petitioner was subjected to a hostile and unsafe home environment, as his father was abusive, struggled with alcoholism, and expressed homophobic hostility toward Petitioner. Petitioner's father was later deported to Mexico, where he currently resides.
3. In 2008, Petitioner was first detained by immigration authorities and granted voluntary departure. Following the death of his grandmother in April 2008, Petitioner briefly returned to Mexico to attend her funeral. However, due to the risk of continued discrimination and social persecution, Petitioner reentered the United States on or about July 4, 2008, at or near Falfurrias, Texas, without inspection. Since that time, Petitioner has remained continuously present in the United States, where he has established residence, maintained employment, and developed significant community ties.
4. In December 2019, Petitioner was [redacted] a serious and life-threatening medical condition requiring consistent and specialized treatment. Petitioner relies on ongoing medical care that is not readily accessible to him in Mexico. He currently receives treatment through the HCA Healthcare Foundation in Conroe, Texas, which has enabled him to maintain a stable condition. Petitioner attends medical appointments [redacted] and requires [redacted] to manage his condition.

5. In addition to [redacted] Petitioner suffers from long-term physical impairments resulting from a serious workplace accident in July 2016. During the incident, a machine malfunctioned at an industrial sawmill, causing the traumatic amputation of three fingers on one hand. Petitioner was hospitalized for approximately three months and has since required ongoing medical treatment and rehabilitation through workers' compensation. He continues to experience chronic pain, which is exacerbated by cold weather and significantly limits his ability to work and perform daily activities.
6. On August 7, 2023, Petitioner filed a Form I-192, Application for Advance Permission to Enter as a Nonimmigrant, and a Form I-914, Application for T Nonimmigrant Status. On February 27, 2025, USCIS denied Petitioner's Form I-914, stating that the record did not establish that Petitioner's valid signature appeared on the application. ***See* Exhibit 1 - Form I-914 Denial.**
7. On August 25, 2025, the Department of Homeland Security initiated removal proceedings under 8 U.S.C. § 1229a. ***See* Exhibit 2 - Notice to Appear.**

8. On July 30, 2025, between approximately 2:00 and 3:00 p.m., Petitioner was involved in a motor vehicle accident on Highway 105 in the Cleveland–Conroe, Texas area while driving to pick up medication from a clinic. According to Petitioner, a trailer struck the driver's side of his vehicle, causing his car to spin and sustain severe damage, rendering it inoperable. Emergency medical services arrived at the scene and transported Petitioner by ambulance to a hospital for emergency treatment.

9. While Petitioner was receiving medical attention, a law enforcement officer arrived at the hospital. Medical personnel, including a nurse and a physician, advised the officer that

Petitioner should not be removed due to his injuries. Nevertheless, the officer—identified by Petitioner as a female officer wearing a sheriff's badge—insisted on taking Petitioner into custody. The petitioner was removed from the hospital and placed into a police vehicle waiting outside, without being allowed to complete medical treatment.

10. Petitioner was transported to Montgomery County, Texas, where he appeared for an initial court proceeding. Petitioner was advised to plead guilty in order to secure a prompt release, and he did so. He remained detained for approximately one month. Petitioner later retained private counsel, who advised him that the offense would be treated as a misdemeanor, and Petitioner also resolved a pending citation related to driving without a license.

11. Approximately four days after the court proceedings, Petitioner was placed under an immigration hold and transferred to the Houston Contract Detention Facility, where he remains in custody. During his detention in county custody, Petitioner was denied access to his prescribed medication for approximately two weeks and did not receive adequate medical treatment for the injuries sustained in the accident.

12. Petitioner further states that no police report was ever made available regarding the accident. Due to the severity of the incident and the immediate medical transport, Petitioner was unable to obtain identifying information from the trailer driver or retrieve his personal belongings, including his phone, which remained in his vehicle.

13. Mr. Martinez-Vazquez remains detained at the HOUSTON CONTRACT DETENTION FACILITY (CDF), in Houston, TX.

14. On October 23, 2025, Petitioner applied for relief and lawful presence in the United States by filing an asylum/withholding of removal application under 8 U.S.C. § 1158 and 8 U.S.C. § 1231(b)(3)**. See Exhibit 3 - Copy of Filed Form I-589.**

15. On November 10, 2025, the Immigration Judge denied Petitioner's Application for Asylum and Withholding of Removal, and ordered him removed to Mexico. **See Exhibit 4 - Order of the Immigration Judge.**

16. Respondent timely filed a Notice of Appeal on November 28, 2025. On December 4, 2025, the Board of Immigration Appeals acknowledged receipt of Petitioner's appeal, which remains pending. ***See*** **Exhibit 5 - Filing Receipt for Appeal or Motion.**

17. Petitioner is a class member in *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873SSS-BFM (C.D. Cal.). In *Maldonado Bautista* the court certified the Bond Eligible Class, defined as: All noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination. *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025). Petitioner is a noncitizen without lawful status detained at the Houston Contract Detention Facility (CDF) who (1) entered the United States without inspection, (2) was not apprehended upon arrival, and (3) is not subject to mandatory detention pursuant to 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231. Accordingly, as a member of the Bond Eligible Class, Petitioner is entitled to the application of the law as stated in the *Maldonado Bautista* orders.

18. Petitioner preserves the statutory argument rejected in *Buenrostro-Mendez v. Bondi*, No. 25-20496, 2026 WL 323330 (5th Cir. Feb. 6, 2026)for purposes of further review. The question of whether detention authority arises under INA § 235, 8 U.S.C. § 1225, or INA § 236, 8 U.S.C. § 1226, for noncitizens already present in the United States remains the subject of ongoing litigation in multiple courts of appeals. Because the Fifth Circuit sitting en banc or the Supreme Court may revisit or reject the panel's conclusion in *Buenrostro*, Petitioner raises this statutory claim to preserve the issue and ensure eligibility for relief should the governing law change.

19. On July 8, 2025, DHS issued a memo to all employees of Immigration and Customs Enforcement (Hereinafter "ICE") stating that "[t]his message serves as notice that DHS, in coordination with the Department of Justice (Hereinafter "DOJ"), has revisited its legal position on detention and release authorities. DHS has determined that section 235 of the Immigration and Nationality Act (INA), rather than section 236, is the applicable immigration detention authority for all applicants for admission. The following interim guidance is intended to ensure immediate and consistent application of the Department's legal interpretation while additional operational guidance is developed." Memorandum, U.S. Immigration & Customs Enf't, *Interim Guidance Regarding Detention Authority for Applications for Admission* (July 8, 2025), available at AILA Doc. No. 25071607, https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission.

20. The BIA's September 5, 2025, precedential decision in *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025) held that the plain language of 8 U.S.C. § 1225(b)(2)(A) mandates that all aliens who have entered the United States without admission are subject to

mandatory detention. . This decision is in contravention with the DHS's longstanding interpretation that noncitizens already present in the country such as Respondent were detained pursuant to 8 U.S.C. § 1226(a) and not §1225(b)(2)(A).

21. Mr. Martinez-Vazquez's instant removal case is still pending.

22. Mr. Martinez-Vazquez therefore seeks immediate release from custody, and requests that this Court issue an Order to Show Cause within three days directing Respondents to explain why Petitioner is being unlawfully detained.

23. Mr. Martinez-Vazquez's detention pursuant to § 1225(b)(2)(A) violates the plain language of the INA and its implementing regulations. Mr. Martinez-Vazquez, who was apprehended in the interior of the U.S., should not be considered an "applicant for admission" who is "seeking admission." Rather, he should continue to be detained pursuant to 8 U.S.C. § 1226(a), which was DHS's initial determination for Petitioner and allows for release on conditional on an order of release on recognizance.

24. Through this petition, Mr. Martinez-Vazquez asks this Court to find that Respondents have unlawfully detained him under § 1225(b)(2)(A), that his detention is appropriate under § 1226(a).

CUSTODY

25. Petitioner is in the physical custody of Defendant-Respondent BRETT A. BRADFORD, Field Office Director for Detention and Removal, U.S. Immigration and Customs Enforcement ("ICE"), DHS, and Respondent WARDEN, Warden of the HOUSTON CONTRACT DETENTION FACILITY (CDF). At the time of the filing of this petition, Plaintiff-Petitioner is detained at the HOUSTON CONTRACT DETENTION FACILITY

(CDF) in Houston, TX. The HOUSTON CONTRACT DETENTION FACILITY (CDF) is run by DHS to detain noncitizens such as Petitioner. Petitioner is under the direct control of Respondents and their agents.

JURISDICTION

26. Jurisdiction is proper and relief is available pursuant to 28 U.S.C. 1131 (federal question), 28 USC 1346 (original jurisdiction), 5 USC 702 (waiver of sovereign immunity), 28 USC 2241 (habeas corpus jurisdiction), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).

VENUE

27. Venue is proper because Petitioner is currently detained in Houston, TX, and now remains detained at the HOUSTON CONTRACT DETENTION FACILITY (CDF). *See also generally* Rumsfeld v. Padilla, 542 U.S. 426, 447 (2004) (generally, "[w]henever a § 2241 habeas petitioner seeks to challenge his present physical custody within the United States," he must file the petition in the district of confinement and name his immediate custodian as the respondent), *see also* Braden v. 30th Judicial Circuit of Kentucky, 410 U.S. 484, 493-500 (1973), venue lies in the United States District Court for the Southern District of Texas, the judicial district in which petitioner is currently detained.

PARTIES

Petitioner

28. Petitioner is a citizen and national of Mexico. He is currently in ICE custody and detained at the HOUSTON CONTRACT DETENTION FACILITY (CDF).

Respondents

29. Respondent MARKWAYNE MULLIN is the Secretary of the Department of Homeland Security. He is responsible for the implementation and enforcement of the Immigration and Nationality Act and oversees ICE, which is responsible for Petitioner's detention. Respondent has ultimate custodial authority over Petitioner. In this capacity, he is responsible for the administration of immigration laws pursuant to Section 103(a) of the INA, 8 U.S.C. § 1103(a) (2007); routinely transacts business in the Southern District of Texas; is legally responsible for pursuing any effort to detain and remove the Petitioner; and as such is a custodian of the Petitioner. He is sued in her official capacity. Respondent Mullin's address is U.S. Department of Homeland Security, Office of the General Counsel, 2707 Martin Luther King Jr. Ave. SE, Washington, DC 20528-0485.
30. Respondent Pamela BONDI is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system operates as a component agency. She routinely transacts business in the Western District of Texas in this capacity; is responsible for the administration of the immigration laws pursuant to Section 103(a) of the INA, 8 U.S.C. § 1103(g) (2007); and as such is a custodian of the Petitioner. She is sued in her official capacity. At all times relevant hereto, Respondent Bondi's address is U.S. Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530- 0001.
31. Respondent Todd M. LYONS is named in his official capacity as the Acting Director of ICE. He administers and enforces the immigration laws of the United States, routinely conducts business in the Western District of Texas, Brownsville Division, is legally responsible for pursuing efforts to remove the Petitioner, and as such is the custodian of the Petitioner. ICE's responsibilities include operating the immigration detention system.

In his capacity as ICE Acting Director, Respondent Lyons exercises control over and is custodian of persons held at ICE facilities nationally. He is the Petitioner's immediate custodian and responsible for Petitioner's detention. He is sued in his official capacity. At all times relevant hereto, Respondent Lyons's address is ICE, Office of the Principal Legal Advisor, 500 12th St. SW, Mail Stop 5900, Washington DC 20536-5900.

32. Respondent Brett A. BRADFORD is the Field Office Director for Detention and Removal, ICE, DHS. He is the custodial official acting within the boundaries of the judicial district of the United States District Court for the Southern District of Texas. Pursuant to Respondent's orders, Petitioner remains in custody. Respondent is sued in his official capacity. His address is 126 Northpoint Drive Houston, TX 77060.

33. Respondent WARDEN, Warden at the HOUSTON CONTRACT DETENTION FACILITY (CDF), 15850 Export Plaza Drive, Houston, TX 77032, where the petitioner is detained. The Warden has immediate physical custody of Petitioner. He is sued in his official capacity.

STATEMENT OF THE FACTS

34. Petitioner, Luis Daniel Martinez-Vazquez ("Mr. Martinez-Vazquez"), is a 39-year-old native and citizen of Mexico.

35. In 2002, Petitioner first entered the United States as a minor, seeking safety from ongoing social persecution and the opportunity to live free from discrimination. Upon arrival, Petitioner resided with his father for approximately four years. During that period, Petitioner was subjected to a hostile and unsafe home environment, as his father was abusive, struggled with alcoholism, and expressed homophobic hostility toward Petitioner. Petitioner's father was later deported to Mexico, where he currently resides.

36. In 2008, Petitioner was first detained by immigration authorities and granted voluntary departure. Following the death of his grandmother in April 2008, Petitioner briefly returned to Mexico to attend her funeral. However, due to the risk of continued discrimination and social persecution, Petitioner reentered the United States on or about July 4, 2008, at or near Falfurrias, Texas, without inspection. Since that time, Petitioner has remained continuously present in the United States, where he has established residence, maintained employment, and developed significant community ties.

37. In December 2019, Petitioner was [redacted] a serious and life-threatening medical condition requiring consistent and specialized treatment. Petitioner relies on ongoing medical care that is not readily accessible to him in Mexico. He currently receives treatment through the HCA Healthcare Foundation in Conroe, Texas, which has enabled him to maintain a stable condition. Petitioner attends medical appointments approximately [redacted] and requires [redacted] to manage his condition.

38. In addition to [redacted] Petitioner suffers from long-term physical impairments resulting from a serious workplace accident in July 2016. During the incident, a machine malfunctioned at an industrial sawmill, causing the traumatic amputation of three fingers on one hand. Petitioner was hospitalized for approximately three months and has since required ongoing medical treatment and rehabilitation through workers' compensation. He continues to experience chronic pain, which is exacerbated by cold weather and significantly limits his ability to work and perform daily activities.

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February 27, 2025, USCIS denied Petitioner's Form I-914, stating that the record did not establish that Petitioner's valid signature appeared on the application. ***See* Exhibit 1 - Form I-914 Denial.**

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42. While Petitioner was receiving medical attention, a law enforcement officer arrived at the hospital. Medical personnel, including a nurse and a physician, advised the officer that Petitioner should not be removed due to his injuries. Nevertheless, the officer—identified by Petitioner as a female officer wearing a sheriff's badge—insisted on taking Petitioner into custody. The petitioner was removed from the hospital and placed into a police vehicle waiting outside, without being allowed to complete medical treatment.

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misdemeanor, and Petitioner also resolved a pending citation related to driving without a license.

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45. Petitioner further states that no police report was ever made available regarding the accident. Due to the severity of the incident and the immediate medical transport, Petitioner was unable to obtain identifying information from the trailer driver or retrieve his personal belongings, including his phone, which remained in his vehicle.

46. Mr. Martinez-Vazquez remains detained at the HOUSTON CONTRACT DETENTION FACILITY (CDF), in Houston, TX.

47. On October 23, 2025, Petitioner applied for relief and lawful presence in the United States by filing an asylum/withholding of removal application under 8 U.S.C. § 1158 and 8 U.S.C. § 1231(b)(3)**. See Exhibit 3 - Copy of Filed Form I-589.**

48. On November 10, 2025, the Immigration Judge denied Petitioner's Application for Asylum and Withholding of Removal, and ordered him removed to Mexico. **See Exhibit 4 - Order of the Immigration Judge.**

49. Respondent timely filed a Notice of Appeal on November 28, 2025. On December 4, 2025, the Board of Immigration Appeals acknowledged receipt of Petitioner's appeal, which remains pending. ***See*** **Exhibit 5 - Filing Receipt for Appeal or Motion.**

LEGAL BACKGROUND

50. Section 2241 of 28 United States Code provides in relevant part that "[w]rits of habeas corpus may be granted by . . . the district courts within their respective jurisdictions" when a petitioner "is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(a), (c)(3); *see also* I.N.S. v. St. Cyr, 533 U.S. 289, 305, 121 S. Ct. 2271 (2001).

51. District courts grant writs of habeas corpus to those who demonstrate their custody violates the Constitution or laws of the United States. 28 U.S.C. § 2241(c)(3).

52. Habeas corpus "entitles [a] prisoner to a meaningful opportunity to demonstrate that he is being held pursuant to 'the erroneous application or interpretation' of relevant law." *Boumediene v. Bush*, 553 U.S. 723, 779, 128 S. Ct. 2229 (2008) (*quoting*, St. Cyr, 533 U.S. at 302.

53. The Fifth Amendment's Due Process Clause protects the right of all persons to be free from "depriv[ation] of life, liberty, or property, without due process of law." U.S. Const. amend. V.

54. "It is well established that the Fifth Amendment entitles aliens to due process of law[.]" *Trump v. J. G. G.*, 604 U.S. ---, 145 S. Ct. 1003, 1006 (2025) (*quoting* Reno v. Flores, 507 U.S. 292, 306, 113 S. Ct. 1439 (1993)).

55. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." Zadvydas, 533 U.S. at 690.

56. The INA prescribes three basic mechanisms for detention for non-citizens, 8 U.S.C. § 1225, for arriving aliens and applicants for admission, § 1226 the default detention statute, and § 1231 for post–final order detention.

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, 300-582 to 3009-583, 3009-585. Section 1226 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, the U.S. Department of Justice's Executive Office of Immigration Review ("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) ("Despite being applicants for admission, aliens who are present without having been admitted or paroled (formed referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination").

59. Thus, in the decades that followed, most people who entered without inspection and were thereafter detained and placed in standard removal proceedings were considered for release on bond and also received bond hearings before an Immigration Judge ("IJ"), unless their criminal history rendered them ineligible. That practice was consistent with many more decades of prior practice, in which noncitizens who had entered the United States, even if without inspection, were entitled to a custody hearing before an IJ or other

hearing officer. In contrast, those who were stopped at the border were only entitled to release on parole. *See* 8 U.S.C. § 1252(a) (1994); see also H.R. Rep. No. 104-469, pt. 1, at 220 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

60. For decades, residents of the U.S. who entered without inspection and were subsequently apprehended by ICE in the interior of the country have been detained pursuant to § 1226 and entitled to bond hearings before an IJ, unless barred from doing so due to their criminal history.

61. On July 8, 2025, however, DHS stated a new position with regard to custody determinations as follows:

> An "applicant for admission" is 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. INA § 235(a)(1). **Effective immediately, it is the position of DHS that such aliens are subject to detention under INA § 235(b) and may not be released from ICE custody except by INA § 212(d)(5) parole**. These aliens are also ineligible for a custody redetermination hearing ("bond hearing") before an immigration judge and may not be released for the duration of their removal proceedings absent a parole by DHS. For custody purposes, these aliens are now treated in the same manner that "arriving aliens" have historically been treated. **The only aliens eligible for a custody determination and release on recognizance, bond, or other conditions under INA § 236(a) during removal proceedings are aliens admitted to the United States and chargeable with deportability under INA § 237, with the exception of those subject to mandatory detention under INA § 236(c).**
>
> Moving forward, ICE will not issue Form I-286, Notice of Custody Determination, to applicants for admission because Form I-286 applies by its terms only to custody determinations under INA § 236 and part 236 of Title 8 of the Code of Federal Regulations. With a limited exception for certain habeas petitioners, on which the Office of the Principal Legal Advisor (OPLA) will individually advise, if Enforcement and Removal Operations (ERO) previously conducted a custody determination for an applicant for admission still detained in ICE custody, ERO will affirmatively cancel the Form I-286. *See* https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-forapplications-for-admission (emphasis original).

62. As a result, according to DHS all noncitizens who have entered the United States without inspection and are subject to the grounds of inadmissibility, including long-time U.S. residents, are now considered to be subject to mandatory detention under INA § 235(b) and ineligible for release on bond. Conversely, according to DHS "[t]he only aliens eligible for a custody determination and release on recognizance, bond, or other conditions under INA § 236(a) during removal proceedings are aliens admitted to the United States and chargeable with deportability under INA § 237, with the exception of those subject to mandatory detention under INA § 236(c)." *Id*.

63. Prior to July 8, 2025, the predominant form of detention authority for anyone arrested in the interior of the United States was 8 U.S.C. § 1226(a). Further, the Petitioner in this case was initially arrested and released pursuant to 8 U.S.C. § 1226(a), and is demonstrated by DHS's own forms.

64. Under § 1226(a) the Attorney General may release a detainee on bond on the authority of ICE or by an Immigration Judge. There are standards for release: bond is available if the detainee "demonstrate[s] . . . that such release would not pose a danger to property or persons, and that [he] is likely to appear for any future proceeding." 8 C.F.R. § 36.1(c)(8). "[T]he immigration judge is authorized to exercise the authority . . . to detain the alien in custody, release the alien, and determine the amount of bond." Id. § 236.1(d)(1). If denied release at the initial bond hearing, a § 1226(a) detainee may request a custody redetermination hearing before an IJ. That request will "be considered only upon a showing that the alien's circumstances have changed materially." *Id*. § 1003.19(e).

65. Under § 1226(a) the Attorney General may release a detainee on bond on the authority of ICE or by an Immigration Judge. There are standards for release: bond is available if the

detainee "demonstrate[s] . . . that such release would not pose a danger to property or persons, and that [he] is likely to appear for any future proceeding." 8 C.F.R. § 36.1(c)(8). "[T]he immigration judge is authorized to exercise the authority . . . to detain the alien in custody, release the alien, and determine the amount of bond." Id. § 236.1(d)(1). If denied release at the initial bond hearing, a § 1226(a) detainee may request a custody redetermination hearing before an IJ. That request will "be considered only upon a showing that the alien's circumstances have changed materially." *Id*. § 1003.19(e).

CLAIMS FOR RELIEF

COUNT I

VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT OF THE UNITED STATES CONSTITUTION AND *MATHEWS V. ELDRIDGE FACTORS* PROCEDURAL DUE PROCESS CLAIM

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

67. The Due Process Clause asks whether the government's deprivation of a person's life, liberty, or property is justified by a sufficient purpose. Here, there is no question that the government has deprived Petitioner of his liberty. His continued detention violates his right to substantive and procedural due process guaranteed by the Fifth Amendment to the U.S. Constitution.

68. The Due Process Clause of the Fifth Amendment to the U.S. Constitution provides that "[n]o person shall…be deprived of life, liberty, or property without due process of law." As a noncitizen who shows well over "two years" physical presence in the United States

(indeed she has over 11 years), Petitioner is entitled to Due Process Clause protections against deprivation of liberty and property. *See* Zadvydas, 533 U.S. at 693 ("[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent."). Any deprivation of this fundamental liberty interest must be accompanied not only by adequate procedural protections, but also by a "sufficiently strong special justification" to outweigh the significant deprivation of liberty. *Id*. at 690.

69. This Respondent's new policy, along with the BIA's decision in *Yajure-Hurtado* violates the procedural due process rights of noncitizen detainees, both facially and as applied. It lacks any reference to or establishment of any procedure for challenging its invocation. The Court should find that there can be no possible application of this policy that would satisfy due process where it purports to authorize the most severe and recognized deprivation of liberty without a hint of a process to challenge such deprivation. In contrast, as the Supreme Court in *Demore* highlighted in upholding the mandatory detention of a noncitizen convicted of a crime under § 1226(c), "process" has been built into that mandatory detention scheme. For example, § 1226(c) applies to detainees whose convictions were generally "obtained following the full procedural protections [the] criminal justice system offers." *Demore v. Kim*, 538 U.S. 510, 513 (2003); *id.* at 525 n.9, (noting that "respondent became 'deportable' under § 1226(c) only following criminal convictions that were secured following full procedural protections"). And if mandatory detention becomes unnecessarily prolonged in that context, the due process' prohibition of arbitrary government detention could entitle a detainee "to an individualized determination as to his risk of flight and dangerousness if the continued detention became

unreasonable or unjustified." Id. at 532 (Kennedy, J., concurring). Detention pursuant to the automatic stay after the government already failed to establish a justification for it, with no process afforded to challenge the detention as arbitrary, is facially violative of procedural due process.

70. The Fifth Amendment guarantees that no person shall be deprived of liberty 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 Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). "Government detention violates the Due Process Clause unless it is ordered in a criminal proceeding with adequate procedural safeguards, or in certain special and non-punitive circumstances 'where a special justification ... outweighs the individual's constitutionally protected interest in avoiding physical restraint.' " *Zavala v. Ridge*, 310 F. Supp. 2d 1071, 1076 (N.D. Cal. 2004) (*quoting Kansas v. Hendricks*, 521 U.S. 346, 356 (1997)).

71. Here, the DHS, affirmed by the BIA, has determined, improperly, that all persons present in the U.S. who entered without admission are ineligible for bond. It is thus a foregone conclusion that the BIA will affirm the IJ's decision here, and find Petitioner ineligible for bond. Like the accused in criminal cases, habeas is proper. *See Moore v. Dempsey*, 261 U.S. 86 (1923); *Johnson v. Zerbst*, 304 U.S. 458 (1938); *Burns v. Wilson*, 346 U.S. 137, 154 (1953).

72. To determine whether a civil detention violates a detainee's due process rights, courts apply the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976). Those factors are: (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." *Mathews*, 424 U.S. at 335, 96 S.Ct. 893; *see also Hernandez-Fernandez v. Lyons*, 2025 WL 2976923 at *8 (W.D. Tex. Oct. 21, 2025).

- **PRIVATE INTEREST**

73. "'The interest in being free from physical detention' is 'the most elemental of liberty interests.'" *Martinez v. Noem*, No. 5:25-CV-01007-JKP, 2025 WL 2598379, at *2 (W.D. Tex. Sept. 8, 2025) (quoting *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)). Federal courts in Texas have found that noncitizens have a protected liberty interest in their freedom, regardless of citizenship status, when they have spent time living, working, or supporting a family in the interior of the United States. See, e.g., *Lopez Miranda v. Flores*, No. EP-25-CV-584-KC, 2025 WL 3901908, at *3 (W.D. Tex. Dec. 10, 2025); *Chinchilla v. De Anda-Ybarra*, No. EP-25-CV-00548-DB, 2025 WL 3645178 (W.D. Tex. Dec. 16, 2025) (finding noncitizen has protectable liberty interest because he was "living in the United States for over four years and attends his local church"); *Hernandez-Fernandez*, 2025 WL 2976923 at *9 ("Because he spent nearly three years at liberty in the United States, [petitioner] possesses a cognizable interest in his freedom from detention.").

74. Mr. Martinez-Vazquez last entered the United States on or about July 4, 2008, at or near Falfurrias, Texas, without inspection. Since that time, Petitioner has remained continuously present in the United States, where he has established residence, maintained employment, and developed significant community ties.

75. In December 2019, Petitioner was diagnosed [redacted] a serious and life-threatening medical condition requiring consistent and specialized treatment. Petitioner relies on ongoing medical care that is not readily accessible to him in Mexico. He currently receives treatment through the HCA Healthcare Foundation in Conroe, Texas, which has enabled him to maintain a stable condition. Petitioner attends medical appointments approximately [redacted] and requires [redacted] to manage his condition. In addition [redacted] Petitioner suffers from long-term physical impairments resulting from a serious workplace accident in July 2016. During the incident, a machine malfunctioned at an industrial sawmill, causing the traumatic amputation of three fingers on one hand. Petitioner was hospitalized for approximately three months and has since required ongoing medical treatment and rehabilitation through workers' compensation. He continues to experience chronic pain, which is exacerbated by cold weather and significantly limits his ability to work and perform daily activities.

76. Petitioner applied for relief and lawful presence in the United States by filing an asylum/withholding of removal application under 8 U.S.C. § 1158 and 8 U.S.C. § 1231(b)(3), which is currently pending on appeal.

II. RISK OF ERRONEOUS DEPRIVATION

77. The government's refusal to provide bond hearings creates a high risk of erroneous deprivation, since the process afforded in removal proceedings does "not ameliorate the risk that [a petitioner] will be erroneously deprived of his liberty while his removability is assessed." *See* Rojas v. Noem, 2025 WL 3038262 at *3-*4. Bond hearings that "conduct individualized custody determinations considering flight risk and dangerousness" are the

precise "type of proceeding that would give [a noncitizen] an opportunity to be heard and to receive a meaningful assessment of whether he is dangerous or likely to abscond." *Id.* at *4.

78. Petitioner's history of longstanding residence in the United States, pending appeal for Asylum and Withholding of Removal and strong family and community ties demonstrate that individualized review is particularly important to reduce the risk of erroneous detention.

1. GOVERNMENT'S INTEREST

79. Regardless of the government's purported interest in enforcing its interpretation of the immigration detention statutes, a habeas petitioner's "constitutional interest in his liberty exists above and apart from the INA." *Rojas*, 2025 WL 3038262 at *4 (citing A.A.R.P. v. Trump, 605 U.S. 91, 94 (2025) ("[T]he Fifth Amendment entitles aliens to due process of law in the context of removal proceedings.")). Further, while the government "has an interest in ensuring that noncitizens appear for their removal hearings and do not pose a danger to the community," such interest "would be squarely addressed through a bond hearing." Id. (citing *Martinez v. Noem*, 2025 WL 2598379 at *4 (W.D. Tex. Sep. 8, 2025)).

Fifth Circuit Precedent on Procedural Due Process

80. Federal courts in the Fifth Circuit have repeatedly granted release on procedural due process grounds. Here is a list of a few helpful cases to reference in drafting a procedural due process argument:

81. *Hassen v. Noem*, 3:26-cv-00048-DB (W.D. Tex. Feb. 9, 2026)[1]

82. *Clemente Ceballos v. Garite*, 3:26-cv-00312-DB (W.D. Tex. Feb 10, 2026)[2]

83. *Santiago v. Noem*, 2025 WL 2792588 (W.D. Tex. Oct. 2, 2025)

84. *Hernandez-Fernandez v. Lyons*, 2025 WL 2976923 (W.D. Tex. Oct. 21, 2025)

85. *Parada-Hernandez v. Johnson*, 2025 WL 3465958 (N.D. Tex. Oct. 29, 2025), *report and recommendation adopted*, 2025 WL 3463682 (N.D. Tex. Dec. 2, 2025)

86. *Rojas v. Noem*, 2025 WL 3038262 (W.D. Tex. Oct. 30, 2025)

87. *De Leon Hernandez v. Bondi*, 2025 WL 3217037 (W.D. La. Nov. 18, 2025)

88. *Chinchilla v. De Anda-Ybarra*, 2025 WL 3645178 (W.D. Tex. Dec. 16, 2025)

89. *Vieira v. De Anda-Ybarra*, 2025 WL 2937880 (W.D. Tex. Oct. 16, 2025)

90. *Cruz-Reyes v. Bondi*, (S.D. Tex. Feb. 3, 2026)

91. *Singh v. Taylor*, 2026 WL 360913 (W.D. Tex. Feb. 9, 2026)

92. *Aguila v. Warden, ERO El Paso Camp East Montana*, (W.D. Tex. Feb. 9, 2026)

COUNT II

VIOLATION OF 8 U.S.C. § 1226(a)

UNLAWFUL DENIAL OF RELEASE ON BOND

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

94. 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

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1 Granting habeas relief after acknowledging the Fifth Circuit's precedential decision in Buenrostro-Mendez v. Bondi and noting the case "does not change the case's outcome on procedural due process grounds."

2 Same as footnote 1.

inadmissibility. As relevant here, § 1225(b)(2) does not apply to those persons Respondents previously determined should be detained and released under § 1226(a). Further, 8 U.S.C. § 1225(b)(2) does not justify cancellation of a bond or release order issued under 8 U.S.C. § 1226(a).

95. Nonetheless, Respondents have adopted a policy and practice of re-interpreting the detention and release statutory scheme in the INA.

96. The unlawful application of 8 U.S.C. § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates the INA.

COUNT III

VIOLATION OF 8 U.S.C. § 1226(a)

UNLAWFUL DENIAL OF RELEASE ON BOND

97. Petitioner re-alleges and incorporates herein by reference every allegation set forth in the preceding paragraphs.

98. 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, § 1225(b)(2) does not apply to those persons Respondents previously determined should be detained and released under § 1226(a). Further, 8 U.S.C. § 1225(b)(2) does not justify cancellation of a bond or release order issued under 8 U.S.C. § 1226(a).

99. Nonetheless, Respondents have adopted a policy and practice of re-interpreting the detention and release statutory scheme in the INA.

100. The unlawful application of 8 U.S.C. § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates the INA.

COUNT III

VIOLATION OF BOND REGULATIONS

8 C.F.R. §§ 236.1, 1232.1 and 1003.19

UNLAWFUL DENIAL OF RELEASE ON BOND

101. Petitioner re-alleges and incorporates herein by reference every allegation set forth in the preceding paragraphs.

102. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of "Apprehension, Custody, and Detention of [Noncitizens]," the agencies explained that "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) *will be eligible for bond and bond redetermination*." 62 Fed. Reg. at 10323 (emphasis added). The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.

103. Nonetheless, Respondents have adopted a policy and practice of applying 8 U.S.C. § 1225(b)(2) to noncitizens like Petitioner whom Respondents previously determined should be detained and released pursuant to § 1226(a).

104. The unlawful application of 8 U.S.C. § 1225(b)(2) to Petitioner unlawfully mandates her continued detention and violates 8 C.F.R. §§ 236.1, 1232.1 and 1003.19.

COUNT IV

VIOLATION OF THE APA CONTRARY TO LAW AND ARBITRARY AND CAPRICIOUS AGENCY POLICY

105. Petitioner re-alleges and incorporates herein by reference every allegation set forth in the preceding paragraphs.

106. The APA provides that a "reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

107. 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 whom Defendants-Respondents previously determined should be detained and released under 8 U.S.C. § 1226(a). Such noncitizens are detained (and released) under 8 U.S.C. § 1226(a) and are eligible for release on bond, unless they were initially placed in expedited removal proceedings pursuant to 8 U.S.C. § 1225(b)(1) or (b), or were detained under 8 U.S.C. § 1226(c) or § 1231.

108. Nonetheless, Respondents have adopted a policy and practice of applying 8 U.S.C. § 1225(b)(2) to noncitizens like Petitioner whom Respondents previously determined should be detained and released pursuant to 8 U.S.C. § 1226(a).

109. Respondents have failed to articulate reasoned explanations for their decisions, which represent changes in the agencies' policies and positions; have considered factors that

Congress did not intend to be considered; have entirely failed to consider important aspects of the problem; and have offered explanations for their decisions that run counter to the evidence before the agencies.

110. The application of 8 U.S.C. § 1225(b)(2) to Petitioner is arbitrary, capricious, and not in accordance with law, and as such, it violates the APA. *See* 5 U.S.C. § 706(2).

COUNT V
MALDONADO BAUTISTA V. SANTACRUZ

111. Under *Maldonado Bautista v. Santacruz*, the relevant inquiry for determining the statutory basis of detention is the Petitioner's most recent arrest and custody determination, not the historical fact of his entry into the United States.

112. Here, Petitioner last entered the **United States on or about July 4, 2008, at or near Falfurrias, Texas, without inspection**, after leaving Mexico. Critically, however, DHS did not apprehend Petitioner upon arrival. Instead, on August 25, 2025, DHS issued a Notice to Appear under 8 U.S.C. § 1229a.

113. Petitioner's current detention arises solely from DHS's arrest in the interior of the United States, long after his entry. Under *Maldonado Bautista*, detention authority must be assessed based on the circumstances of this most recent arrest, which constitutes the operative deprivation of liberty.

114. Section 1225(b)(2) applies only to individuals who are apprehended "upon arrival" or who are "seeking admission" at the time DHS exercises custody authority. Applying § 1225(b)(2) to Petition—impermissibly transforms "apprehended upon arrival" into a perpetual status, a reading expressly rejected by *Maldonado Bautista*.

115. Petitioner remains detained, if at all, under 8 U.S.C. § 1226(a) and is entitled to an individualized bond hearing before an Immigration Judge.

PRAYER FOR RELIEF

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

1. Assume jurisdiction over this matter;
2. Declare that Respondents' new mandatory detention policy that all noncitizens that entered the U.S. without admission or inspection are "applicants for admission" and charged with removability under § 1182 are subject to mandatory detention pursuant to 8 U.S.C. § 1225(b) is unlawful and in violation of the INA;
3. Order Respondents to file with the Court a complete copy of the administrative file from the Dept. of Justice and the Dept. of Homeland Security;
4. Order Respondents to immediately release Petitioner;
5. Order Respondents to return back to Petitioner his wallet along with its contents including but not limited to Identity Documents, Bank Cards;
6. Enjoin ICE from transferring Petitioner outside of the Southern District of Texas while this matter is pending;
7. Issue an order directing Respondents to show cause why the writ should not be granted within seventy-two hours;
8. Find that a custody redetermination pursuant to 8 C.F.R. 236.1(d) is an inadequate remedy because of DHS's lack of initial decision to review.
9. Find that DHS exercised no discretion under 8 C.F.R. § 236.1(d).

10. Find that Petitioner's detention under 8 U.S.C. § 1226 absent an individualized assessment is a violation of his due process rights.
11. Find that DHS's failure to follow its own regulations and its failure to afford Petitioner the minimal due process under the 5th Amendment violated his rights.
12. Respondents should provide a bond redetermination hearing in which the government bears the burden of proof.
13. In the alternative, Respondents should provide Petitioner a fair bond redetermination hearing before an Immigration Judge as provided by 8 U.S.C. § 1226 and enjoin his further detention under 8 U.S.C. § 1225(b).
14. Award the Petitioner reasonable costs and attorneys' fees under the Equal Access to Justice Act, as amended, 28 U.S.C. §2412; undersigned counsel recognizes the Fifth Circuit's decision in *Barco v. Witte*, 65 F.4th 782 (5th Cir. 2023), cert. denied, 144 S. Ct. 553 (2024) ruling that fees are not available to be awarded in 28 U.S.C. § 2241. Nonetheless, the issue is ripe for redetermination at the Fifth Circuit. Recently, the Tenth Circuit held that the reasoning in *Barco* was not compelling and granted EAJA fees in an immigration detention habeas action. *Daley v. Ceja*, 2025 WL 3058588, 2025 U.S. App. LEXIS 28669 at *24-26 (10th Cir. Nov. 3, 2025) (declining to follow the Fourth and Fifth Circuit precedents holding that habeas is a "hybrid proceeding" no matter the underlying detention.); *see also Abioye v. Oddo*, 2024 WL 4304738, 2024 US. Dist. LEXIS 174205 at *5-8 (W.D. Pa. Sept. 26, 2024) (highlighting the circuit split between the Fourth and Fifth Circuits versus the Second and Ninth Circuits). Given ICE's recent actions in detaining individuals without substantial justification, EAJA fees are needed to ensure attorneys can confront detention that is unconstitutional.

15. Grant any other relief that this Court deems just and proper.

Dated: March 31, 2026

Respectfully submitted,

/s/ David H. Square
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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, LUIS DANIEL MARTINEZ VAZQUEZ, 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 March 31, 2026.

/s/ David H. Square
David H. Square, Esq.

CERTIFICATE OF SERVICE

I hereby certify that on March 31, 2026, I caused the foregoing document to be electronically filed with the Clerk of the Court for the United States District Court for the Southern District of Texas by using the CM/ECF system.

/s/ David H. Square
David H. Square