

**UNITED STATES DISTRICT COURT**  
**FOR THE NORTHERN DISTRICT OF TEXAS**

MOISES ANTONIO PARADA HERNANDEZ )  
ANA PINEDA, )

Petitioners-Plaintiffs, )

v. )

JOSHUA JOHNSON, Acting Field )  
Office Director, ERO Dallas; )

TODD LYONS, Acting Director, U.S. )  
Immigrations and Customs Enforcement; )

SIRCE OWEN, Acting Director, Executive Office )  
For Immigration Review; )

PAMELA BONDI, U.S. Attorney General; )  
and KRISTI NOEM, U.S. Secretary of )  
of Homeland Security, )

Respondents-Defendants. )

Case No \_\_\_\_\_

**PETITION FOR WRIT OF HABEAS CORPUS AND FOR**  
**DECLARATORY JUDGEMENT**

1. Over the last several months, the U.S. Department of Homeland Security (“DHS”) and the U.S. Department of Justice (“DOJ”) have abruptly and unlawfully reversed decades of settled immigration practice in order to deny immigration bond hearings to potentially millions of people in immigration proceedings nationwide, including to potentially thousands of people in Texas.

2. Specifically, DHS and DOJ are systemically misclassifying people arrested inside the United States. These people are generally subject to the detention provisions of 8 U.S.C. §

1226, which usually allows for release on bond and conditions during the pendency of immigration proceedings. It has been this way for decades. DHS and DOJ are now misclassifying these people as being subject to 8 U.S.C. § 1225, which does not allow for release on bond. This misclassification is contrary to almost 30 years of settled law and practice, and it is unlawfully premised solely upon the manner in which the person initially entered the country—in some cases, decades ago.

3. As of early September, this misclassification policy has been uniformly adopted by DHS and DOJ, and it is being applied to all civil immigration detainees and in all Immigration Courts, including people arrested, detained, and/or in immigration proceedings in Texas.

4. As a result, DHS is currently arresting numerous people within Texas and unlawfully detaining them in jails without any possibility of release and without any due process protections even though they are legally required to receive a bond hearing and are eligible for release on bond.

5. Numerous federal judges have already ruled that DHS and DOJ are breaking the law. *See, e.g.*, Memorandum and Order (D.E. 22), *Hilario Rodriguez v. Moniz*, No. 25-12358 (D. Mass. Sept. 18, 2025) (Joun, J.); *Rodriguez Vasquez v. Bostock*, 2025 WL 2782499 (W.D. Wash. Sept. 30, 2025): A federal district court in Washington rejected the government's interpretation of detention policy, collecting several cases where other federal courts have concluded that the BIA's stance "belies the statutory text".

- ***Case 2:25-cv-14626-KSH***, Document 31 (D.N.J. Sept. 26, 2025): A federal district court in New Jersey granted a habeas petition for a noncitizen who had lived in the U.S. for over 20 years, ruling that the mandatory detention under INA § 235 did not apply and

violated the Fifth Amendment's Due Process Clause.

- ***Order Granting Petition for Writ of Habeas Corpus Chiliquinga Yumbillo v. Stamper*** (Case No. 2:25-cv-00479) (D. Me. Sept. 29, 2025): A federal district court in Maine granted a habeas petition, ordering a bond hearing for a noncitizen and concluding the government's detention violated due process rights.
- ***Samb v. Joyce***, 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025): This case and others in the Southern District of New York have opposed the government's expansion of mandatory detention.
- ***Orellana Juarez v. Moniz***, 2025 WL 1698600 (D. Mass. June 11, 2025): This Massachusetts district court case is one of many that have disagreed with the BIA's interpretation, including more recent cases like *Sampiao v. Hyde*, where the court noted its "disagreement with the BIA's analysis".

*Sampiao v. Hyde*, No. 25-11981, 2025 WL 2607924 (D. Mass. Sept. 9, 2025) (Kobick, J.); *see also Pizarro Reyes v. Raycraft*, No. 25-12546, 2025 WL 2609425, at \*7 (E.D. Mich. Sept. 9, 2025) (collecting cases)

6. Nevertheless, DHS and DOJ continue to violate the law and detain people without Due Process in violation of their statutory, regulatory, and constitutional rights.

### **LEGAL BACKGROUND**

7. "In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755 (1987).

8. This fundamental principle of our free society is enshrined in the Fifth Amendment's Due Process Clause, which specifically forbids the Government to "deprive[]" any "person . . . of . . . liberty . . . without due process of law." U.S. Const. Amend. V.

9. "[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence is lawful, unlawful, temporary, or permanent."

*Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) (“[A]liens who have once passed through our gates, even illegally, may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law”).

10. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of liberty” protected by the Due Process Clause. *Zadvydas*, 533 U.S. at 678.

11. The Supreme Court, thus, “has repeatedly recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection,” including an individualized detention hearing. *Addington v. Texas*, 441 U.S. 418, 425 (1979) (collecting cases); *see also Salerno*, 481 U.S. at 755 (requiring individualized hearing and strong procedural protections for detention of people charged with federal crimes); *Foucha v. Louisiana*, 504 U.S. 71, 81-83 (1992) (same for civil commitment for mental illness); *Kansas v. Hendricks*, 521 U.S. 346, 357 (1997) (same for commitment of sex offenders).

12. For decades, the immigration system has implemented this balance through a network of three mutually exclusive detention statutes.

13. First, at the border, individuals “seeking admission” who are placed into removal proceedings are subject to detention without a bond hearing under 8 U.S.C. § 1225(b)(2).<sup>1</sup> *See Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) (describing § 1225 as relating to “borders and ports of entry”). These individuals may request release through humanitarian parole under 8 U.S.C. § 1182(d)(5)(A).

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<sup>1</sup> Separately, there is also a limited subset of individuals in and around the border who may be placed into the Expedited Removal process and are subject to mandatory detention under 8 U.S.C. § 1225(b)(1). *See Make the Road N.Y. v. Noem*, No. 25-190, 2025 WL 2494908, at \*23 (D.D.C. Aug. 29, 2025).

14. Second, individuals arrested inside the United States are generally placed into removal proceedings under 8 U.S.C. § 1229a, during which an Immigration Judge (an “IJ”)—and later potentially the Board of Immigration Appeals (the “BIA”) and a U.S. Court of Appeals—will decide whether or not the person should be deported. During these proceedings, a noncitizen may apply for various forms of relief from deportation, such as asylum, withholding of removal, cancellation of removal, and adjustment of status. The IJ usually holds a series of hearings to determine if the person is eligible for deportation and, even if so, whether to grant some form of relief from deportation. This process can take months or even years.

15. While this process is ongoing, the individuals are generally subject to the detention authority of 8 U.S.C. § 1226. *See Jennings*, 583 U.S. at 288-89 (describing § 1226 detention as relating to people “inside the United States” and “present in the country”). Most of these individuals are eligible for release on bond and conditions under § 1226(a), and they are consequently entitled to a custody redetermination (colloquially called a “bond hearing”) before an IJ to decide whether they should be detained or released. *See* 8 C.F.R. §§ 1003.19(a), 1236.1(d). A bond hearing with strong procedural protections is not mere regulatory grace; it is the baseline Due Process requirement for § 1226 detainees. *See Hernandez-Lara v. Lyons*, 10 F.4th 19, 41 (1st Cir. 2021); *Doe v. Tompkins*, 11 F.4th 1, 2 (1st Cir. 2021); *Brito v. Garland*, 22 F.4th 240, 256-57 (1st Cir. 2021) (affirming class wide declaratory judgment).

16. The Supreme Court and First Circuit have recognized only one exception to this constitutional requirement for a bond hearing for § 1226 detainees: In 2003, in *Demore v. Kim*, the Court held that, under 8 U.S.C. § 1226(c), there is a narrow category of people who can be held in mandatory detention for a brief period of time, if the person has conceded removability and has been convicted of certain crimes following all of the due process afforded by a criminal

adjudication.<sup>2</sup> *See* 538 U.S. 510, 513 (2003).

17. Third, if an individual completes their removal proceedings and all appeals, and is ordered removed, the person is subject to detention under 8 U.S.C. § 1231 while the government attempts to remove them. That statute provides for 90 days of mandatory detention called the “removal period,” followed by discretionary detention within certain limits. *See Zadvydas v. Davis*, 533 U.S. 678, 699-700 (2001) (holding § 1231 detention may not continue if removal is not reasonably foreseeable).

18. This system—in which people arrested inside the United States are generally eligible for a bond hearing and release during immigration proceedings—has existed essentially in its current form since Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, Div. C, § 3003, 110 Stat. 3009-546, 3009-585 to 3009-587 (codified at 8 U.S.C. § 1226). According to IIRIRA’s legislative history, § 1226(a) was intended to “restate the [then-]current provisions in section 242(a)(1) regarding the authority of the Attorney General to arrest, detain, and release on bond an alien who is not lawfully in the United States.” *See Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1260 (W.D. Wash. 2025) (quoting H.R. Rep. No. 104-469, at 229 (1996)). It also reflected nearly a century of law in the United States of allowing people inside the country to seek release while the government decided whether or not to deport them. *See* 34 Stat. 904-05, § 20 (1907) (providing for release on bond for noncitizens alleged to have entered the United States unlawfully); 39 Stat. 874, 890-91, §§ 19, 20 (1917) (similar); 66 Stat. 163, §§ 241(a)(2), 242(a) (1952) (last codified at 8 U.S.C. § 1252(a)(1) (1994)) (providing for release on bond, including for

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<sup>2</sup> “Convictions” for immigration purposes includes both formal adjudications of guilt and certain factual admissions of guilt made during the judicial process, such as the Massachusetts procedure for admitting to sufficient facts in order to secure a continuance without a finding (“CWOFF”). *See* 8 U.S.C. § 1101(a)(48)(A); *De Vega v. Gonzalez*, 503 F.3d 45, 48-49 (1st Cir. 2007).

noncitizens alleged to have entered the United States without inspection).

19. This eligibility for a bond hearing and potential release has applied to people arrested in the United States, regardless of whether they initially entered the country with permission. Indeed, shortly after IIRIRA's enactment, the former Immigration and Naturalization Service and the Executive Office for Immigration Review ("EOIR," which houses the Immigration Courts and BIA) issued an interim rule to implement the statute that expressly stated: "Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination." 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

20. Thus, for almost 30 years, all participants in the immigration system have understood that people arrested inside the United States generally fall within § 1226 for detention purposes and are therefore required to receive a bond hearing upon request—even if they initially entered the country without permission. *See Martinez v. Hyde*, No. 25-11613, 2025 WL 2084238, at \*4 n.9 (D. Mass. July 24, 2025) (citing the United States Solicitor General's representation to the Supreme Court at oral argument that "DHS's long-standing interpretation has been that 1226(a) applies to those who have crossed the border between ports of entry and are shortly thereafter apprehended").

21. However, around late 2022, the Immigration Court in Tacoma, Washington began misclassifying § 1226 detainees arrested inside the United States as mandatory detainees under § 1225(b)(2), solely because they initially entered the country without permission. *See Rodriguez*, 779 F. Supp. 3d at 1244. The U.S. District Court for the Western District of Washington ruled that this practice was likely illegal in April 2025 and ordered a bond hearing for a wrongfully detained litigant. *See id.* at 1263.

22. Nevertheless, three months later, on July 8, 2025, DHS, “in coordination” with the DOJ adopted the Tacoma Immigration Court’s unlawful practice nationwide.<sup>3</sup> Pursuant to the July 2025 Policy, DHS’s representatives in the Immigration Courts began to request that Immigration Judges nationwide misclassify bond-eligible § 1226 detainees as mandatory § 1225(b)(2) detainees and refuse to conduct bond hearings on that basis. Some Immigration Judges agreed. As a result, numerous detainees were illegally denied bond hearings and sought relief in the federal courts. Numerous courts—rejected DHS’s newly invented misclassification as illegal and ordered the detainees to receive a prompt bond hearing. *See Romero*, 2025 WL 2403827, at \*1 (collecting cases).

23. As previously noted, the BIA and the Immigration Courts are entities within EOIR, which is part of the DOJ. On September 5, 2025, in *Matter of Yajure Hurtado*, 29 I&N Dec 216 (BIA 2025) (“*Matter of Hurtado*”), the BIA issued a precedential decision that purports to require all Immigration Judges to misclassify people in this manner. Although the *Matter of Hurtado* decision is fairly recent, multiple federal courts have already ruled that the BIA’s decision is not entitled to any deference under *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412-13 (2024), and have rejected the BIA’s decision as contrary to law. *See, e.g., Chogllo Chafra v. Scott*, No. 25-437, 2025 WL 2688541, at \*7 (D. Me. Sept. 21, 2025) (“I find Yajure Hurtado to be unavailing . . . .”); Order (D.E. 22), *Hilario Rodriguez*, No. 25-12358, at 4 n.4; *Sampiao*, No. 25-11981, 2025 WL 2607924, at \*8 n.11 (“[T]he Court disagrees with the BIA for the reasons given herein.”); *Pizarro Reyes*, 2025 WL 2609425, at \*7 (“[T]he BIA’s decision to pivot from three decades of consistent statutory interpretation and call for [petitioner’s] detention

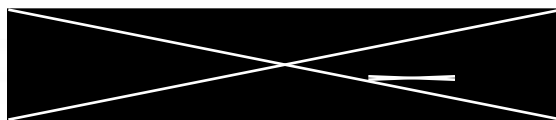
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<sup>3</sup> See Interim Guidance Regarding Detention Authority for Applicants for Admission, <https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>.

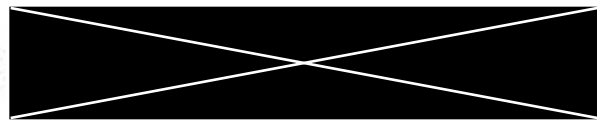
under § 1225(b)(2)(A) is at odds with every District Court that has been confronted with the same question of statutory interpretation.”).

24. Nevertheless, DHS and DOJ are continuing to systemically misclassify people and unlawfully deny them access to bond hearings and release on bond and conditions during the pendency of their immigration proceedings.

### **PETITIONERS' FACTS**

25. Petitioner Moises Antonio Parada-Hernandez, a native and citizen of El Salvador, resides in Dallas. Parada-Hernandez is married to Petitioner Ana Pineda under the common law of Texas. They and their disabled son,  Pena, who is totally physically, emotionally and financially dependent upon them due to his cerebral palsy, are all in Removal Proceedings together. The EOIR Case Status on the internet shows their Merits immigration court hearing is scheduled for September 14, 2027 at 8:30 before IJ Charissa Dvorack. The couple has another minor son who is a U.S. citizen.

26. Petitioner Moises Parada-Hernandez entered the U.S. on or about March 2, 2019, without inspection. He passed a credible fear exam for asylum on or about March 22, 2019.

27. Petitioner Ana Isabel Pineda Chicas, a native and citizen of El Salvador, entered the U.S. on December 17, 2018 with their disabled son  Pineda. He is non-verbal and suffers from cerebral palsy.

28. A Notice to Appear was issued for each of them and filed with the immigration court in Dallas, Texas, thereby commencing removal proceedings against them.

### **PETITIONERS ARE IN THE CUSTODY OF RESPONDENTS**

29. Although § 2241 says that habeas corpus is available only when a person is “in

custody,” courts have interpreted the statute to not require actual physical restraint; rather other restrictions on liberty can satisfy the custody requirement. For example, a person who challenges the conditions of release under an order of supervision may be found to satisfy the “in custody” requirement. Prior to the REAL ID Act, individuals subject to a final order of removal were considered “in custody” for purposes of the habeas corpus statute.<sup>4</sup> This concept of custody has remained the law in post-REAL ID habeas corpus cases.<sup>5</sup> The “in custody” determination is made at the time the habeas corpus petition is filed.<sup>6</sup> If the petitioner is in custody then, the federal court may pass on the merits of the petition even though the individual is free from custody before the petition is acted upon, provided the petitioner may still suffer collateral consequences.<sup>7</sup> On even date herewith, at approximately 1:30 p.m. CST Petitioner Moises Parada Hernandez was taken into physical custody, when he voluntarily and on time presented himself at the ICE - ERO Dallas Office at 8101 N. Stemmons Fwy, Dallas, TX 75242. On information and belief he is still at that location. This unprompted an unjustified arrest was done in furtherance of the misclassification scheme and in derogation of his consistent and punctual compliance with an Order of Supervision under 8 USC 1226(c). The efforts to explain his lawful classification of associate counsel at the ERO office were ignored. o remain under 8 USC 1226 were ignored by the arresting officers, thereby unnecessarily creating an emergency now requiring immediate injunctive intervention by this court.

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<sup>4</sup>See, e.g., *Simmonds v. INS*, 326 F.3d 351, 354 (2d Cir. 2003); *Aguilera v. Kirkpatrick*, 241 F.3d 1286, 1291 (10th Cir. 2001); *Mustata v. U.S. Dep’t of Justice*, 179 F.3d 1017, 1021 n. 4 (6th Cir. 1999); *Nakaranurack v. United States*, 68 F.3d 290, 293 (9th Cir. 1995)

<sup>5</sup>See, e.g., *Rosales v. ICE*, 426 F.3d 733, 734-36 (5th Cir. 2005).

<sup>6</sup>*Zalawadia v. Ashcroft*, 371 F.3d 292, 297 (5th Cir. 2004) (citing *Spencer v. Kemna*, 523 U.S. 1, 7 (1998); *Carafas v. LaVallee*, 391 U.S. 234, 237-38 (1968) (“The Supreme Court has made it clear that the “in custody” determination is made at the time the habeas petition is filed.”))

<sup>7</sup>*Perez v. Greiner*, 296 F.3d 123, 125 (2d Cir. 2002) (“The Supreme Court has held that a habeas petition challenging a criminal conviction is not necessarily mooted when the petitioner is released from prison, as collateral consequences of that conviction may still impinge on the petitioner post-release, and therefore a case or controversy may continue to exist.”); *Handa v. Clark*, 401 F.3d 1129, 1132 (9th Cir. 2005) (same).

30. On or about April 4, 2019 Petitioner Parada-Hernandez was issued a form I-220A, Order of Release on Recognizance. He was ordered to appear for any hearing or interview as directed by ICE or EOIR. He was Ordered to surrender for removal from the United States if so ordered. He was ordered to appear at the Enforcement and Removal Office of Dallas ICE located at 8101 N. Stemmons Freeway, Dallas, TX. He was issued an Order of Release on Recognizance form I-220A on that same date. The Order commanded him to report in person to the ERO office on May 8, 2019 at 9:00 a.m. He was further ordered not to change his place of residence without first securing written permission from the Duty Officer at ERO. He was ordered to not violate any local, State or Federal laws or ordinances. He was ordered to assist ICE in obtaining any necessary travel documents. He was not to associate with any known gang members, criminal associates or be associated with any such activity. He was ordered not to commit any crimes while on this Order of Release on Recognizance. Failure to comply with these conditions “may result in revocation of your release and your arrest and detention by Immigration and Customs Enforcement.”

31. The document titled Notice of Custody Determination, form DHS I-286, provides “Pursuant to the authority contained in section 236 of the Immigration and Nationality Act and part 236 of title 8, Code of Federal Regulations, I have determined that, pending a final administrative determination in your case, you will be (and the box next to Released is marked) the bond amount is 0 and the box next to “on your own recognizance” is marked. The document is dated April 4, 2019 and Signed by officer R. Rodriguez.

32. Petitioner Parada Hernandez has appeared at the Enforcement and Removal Office in Dallas, Texas as often as they require. He appeared on May 8, 2019, January 7, 2020, October 5, 2022, October 7, 2024 and on even date herewith, yet he was arrested nonetheless.

33. Petitioner Ana Pineda was released on her own recognizance on December 25, 2018. Her form I-286 was signed by officer Y.Stokes and also provides for her release under the authority of section 236 of the INA. Her release was contingent on her enrollment and successful participation in an Alternative to Detention Program. She was required to provide an ICE deportation officer with a letter of support from a sponsor, noting their address and telephone number; and provide ICE with proof of post-release travel arrangements relating to pickup, Electronic monitoring and a curfew may be imposed.

34. Petitioner Ana Isabel Pineda Chica has appeared on June 29, 2019, January 13, 2020, March 2, 2020 and is scheduled to appear on April 14, 2026 at 6:00 a.m, where she no doubt will meet the same fate as her husband.

Although Petitioners' detention under this program is authorized, if at all, by 8 U.S.C. § 1226(a), they cannot be jailed without an individualized bond determination.

35. On information and belief, on October 7, 2025, when Petitioner Parada-Hernandez appears for his next required ICE check-in, U.S. Immigration and Customs Enforcement ("ICE") and/or other federal agents acting on ICE's behalf will alter his custody to jail him pursuant to 8 U.S.C. § 1225(b)(2) thereby changing the statute under which he is in custody and making him ineligible for bond. Under *Matter of Hurtado, supra*, he will not provide him a bond hearing, instead requiring him to be held in no-bond detention for an extended and indefinite period of time.

36. DHS has served Petitioners with Notices to Appear alleging that they were not previously admitted or paroled into the United States, and that they are present in the United States without immigration status. The Notices to Appear each state that Petitioners are inadmissible pursuant to INA § 212(A)(6)(a)(i).

37. Petitioners request an order that their custody not be altered other than to require periodic check-ins in the same manner as previously, to preserve the status quo and in line with 30 years of policy and precedent.

38. Otherwise under *Matter of Hurtado, supra*, DHS will arrest Petitioners and will misclassify them under 8 U.S.C. § 1225(b)(2), which will deprive them of individualized bond determinations and deprive them of liberty.

### **JURISDICTION, VENUE, AND PARTIES**

39. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question for Declaratory Judgement), and Article I § 9, cl. 2 of the U.S. Constitution (Suspension Clause).

40. The Federal Declaratory Judgment Statute (28 U.S. Code § 2201) authorizes federal courts to issue "declarations," which are legally binding rulings on the rights and legal obligations of parties. The statute provides a tool to resolve legal uncertainties and disputes before an actual injury or lawsuit occurs. A key component of the act is the requirement of an "actual controversy" to avoid issuing mere advisory opinions.

41. Venue is proper because Petitioners reside in Dallas, Texas and are required to appear before Enforcement and Removal in Dallas, Texas. Further, their immigration court hearing is scheduled for Dallas, TX. Venue is also proper under 28 U.S.C. §§ 1391(b)(2), (e). Petitioners will be arrested and/or apprehended within this District in order to be jailed and unlawfully misclassified as no bond.

42. Respondent Joshua Johnson, is Field Office Director for U.S. Immigration and Customs Enforcement.

43. Respondent Todd Lyons is the Acting Director for U.S. Immigration and Customs Enforcement.

44. Respondent SIRCE OWEN, Acting Director, Executive Office For Immigration Review.

45. Respondent Pamela Bondi is the Attorney General of the United States and administers the Department of Justice, including EOIR, the BIA, and the Immigration Courts.

46. Respondent Kristi Noem is the U.S. Secretary of Homeland Security and administers the Department of Homeland Security.

47. All respondents are named in their official capacities. One or more of the respondents are Petitioners' immediate custodians.

### **CLAIMS FOR RELIEF**

#### **COUNT ONE**

##### **Violation of 8 U.S.C. § 1226(a) and Associated Regulations**

48. Petitioners may be detained, if at all, pursuant to 8 U.S.C. § 1226(a).

49. Under § 1226(a) and its associated regulations, Petitioners are entitled to a bond hearing. See 8 C.F.R. §§ 236.1(d), 1236.1, 1003.19(a)-(f).

50. Petitioners will not be provided with a bond hearing as required by law.

#### **COUNT TWO**

##### **Violation of Fifth Amendment Right to Due Process (Failure to Provide Bond Hearing Under 8 U.S.C. § 1226(a))**

51. Because Petitioners are people subject to detention, if at all, under 8 U.S.C. § 1226(a), the Due Process Clause of the Fifth Amendment to the United States Constitution

requires that they receive a bond hearing with strong procedural protections. *See Hernandez-Lara*, 10 F.4th at 41; *Doe*, 11 F.4th at 2; *Brito*, 22 F.4th at 256-57.

52. Petitioners will not be provided with bond hearings as required by law. Alteration to Petitioners' custody to jail them without bond or opportunity for a bond hearing is therefore unlawful.

**COUNT THREE**  
**Violation of Fifth Amendment Right to Due Process**  
**(Failure to Provide an Individualized Hearing for Domestic Civil Detention)**

53. The Fifth Amendment's Due Process Clause specifically forbids the Government to "deprive[]" any "person . . . of . . . liberty . . . without due process of law." U.S. Const. Amend. V.

54. "[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693; cf. *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 139-40 (2020) (holding noncitizens' due process rights were limited where the person was not residing in the United States, but rather had been arrested 25 yards into U.S. territory, apparently moments after he crossed the border while he was still "on the threshold").

55. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" protected by the Due Process Clause. *Zadvydas*, 533 U.S. 678 at (2001).

56. The Supreme Court, thus, "has repeatedly recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection,"

including an individualized detention hearing. *Addington*, 441 U.S. at 425; see also *Salerno*, 481 U.S. at 755; *Foucha*, 504 U.S. at 81-83; *Hendricks*, 521 U.S. at 357.

**COUNT FOUR**  
**Violation of Fifth Amendment Right to Due Process**  
**(Substantive Due Process)**

57. Because Petitioner will be denied bond even if a hearing is ordered by this Court and the Immigration Judge finds him deserving, he will not be released. The government will not take any steps to effectuate its substantive obligation to ensure that immigration detention bears a “reasonable relation” to the purposes of immigration detention (i.e., the prevention of flight and danger to the community during the pendency of removal proceedings) and is not impermissibly punitive. See *Zadvydas*, 533 U.S. at 690; *Demore*, 538 U.S. at 532-33 (Kennedy, J., concurring).

58. Alteration to Petitioners’ custody to jail them without bond or opportunity for a bond hearing is therefore unlawful, regardless of what statute might apply to purportedly authorize such detention.

**COUNT FIVE**  
**Violation of Administrative Procedure Act (5 U.S.C. § 706)**

59. The BIA’s decision in *Matter of Hurtado* is unlawful because it violates the Administrative Procedure Act, including because the BIA’s decision is arbitrary, capricious, and contrary to law.

60. Alteration to Petitioners’ custody by to jail them without bond or opportunity for a bond hearing by misclassifying them is therefore also illegal.

**PRAYER FOR RELIEF**

Wherefore, Petitioner respectfully requests this Court to grant the following:

- (1) Assume jurisdiction over this matter;
- (2) Order that Petitioners not be transferred outside the Northern District of Texas;
- (3) Issue a Writ of Habeas Corpus and such injunctive relief prior thereto ordering Respondents to not alter Petitioners' custody status without further order of this Court;
- (4) Grant a Declaratory Judgement holding that Respondents are properly to be held in custody pursuant to 8 USC §1226 only.
- (5) Order Defendants to show cause to this Court that they have a lawful basis for invoking the automatic stay regulation at 8 CFR § 1003.19(i).
- (6) Grant attorneys' fees under the Equal Access to Justice Act, 28 U.S.C. § 2412(d) and 5 U.S.C. § 504 et seq. if applicable; and
- (6) Grant any further relief this Court deems just and proper.

Respectfully submitted

/s/ Sondra Turin

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