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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY _____
DEPUTY CLERK

KENNI L. ESCOBAR CHANG,
Petitioner,

V.

KRISTI NOEM, Secretary of the U.S. Department of Homeland Security, MIGUEL VERGARA, Field Operations Director of the San Antonio Immigration and Customs Enforcement Office, TODD M. LYONS, Acting Director of United States Immigration and Customs Enforcement, PAMELA BONDI, Attorney General of the United States; BOBBY THOMPSON, Warden, South Texas Detention Complex, All acting in their official capacities,

Respondents.

SA 25CA 1259 FB

Case No. _____

PETITION FOR WRIT OF HABEAS CORPUS

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PRELIMINARY STATEMENT

1. Petitioner KENNI L. ESCOBAR CHANG, a citizen of Guatemala, is detained by Respondents at the South Texas Detention Complex because the Department of Homeland Security (DHS) and the Executive Office of Immigration Review (EOIR) illegally concluded that he is subject to mandatory detention under 8 U.S.C. § 1225(b). Petitioner seeks relief under 28 U.S.C. § 2241.

2. For the past 12 years, Petitioner has continually resided in Texas, the state where he

met and married his wife, and is a father to three minor children, U.S. citizens all. Having entered the United States as an unaccompanied juvenile on June 16, 2013, and released by DHS upon his own recognizance into the custody of Baptist Child and Family Services for reunification with his mother in Houston, Petitioner has faithfully and in person reported annually to the offices of Immigration and Customs Enforcement (ICE).

3. On June 10, 2025, Petitioner went to an ICE office for an annual check-in and was informed that he had an Order of Removal since March 20, 2018.¹ Petitioner was arrested by ICE and detained. Exhibit C, p. 11.

4. Petitioner filed a motion for bond with exhibits in support with EOIR/Immigration Court in Pearsall, Texas. Exhibit E.

5. Immigration Judge Eric Tijerina set a bond hearing for July 22, 2025, and after receiving evidence and hearing arguments from Petitioner and DHS, granted bond in the amount of \$10,000.00. Exhibit A.

6. DHS appealed to the Board of Immigration Appeals (BIA). Exhibit F.

7. DHS accused Petitioner of a single ground of inadmissibility under immigration laws: having entered the United States without inspection. 8 U.S.C. § 1182(a)(6)(A)(i). Exhibit C, p. 11.

8. On July 8, 2025, DHS introduced a “new policy” instructing all ICE employees to treat anyone alleged to be inadmissible under Section 1182(a)(6)(A)(i) as an “applicant for admission” subject to the mandatory detention under 8 U.S.C. § 1225(b)(2)(A). This announcement of the policy conceded that it was created “in coordination with the Department of Justice (DOJ).” Exhibit J. This incorrect and indefensible interpretation of the Immigration and Nationality Act (“INA”) was endorsed by the Board of Immigration Appeals, an arm of the Department of Justice, on September 5, 2025,

¹ The removal order was recently vacated by an Immigration Judge and Petitioner remains eligible for relief from removal. Petitioner is scheduled to appear before an Immigration Judge in Houston, Texas on November 18, 2025. Exhibit I.

Matter of Yajure Hurtado, 29 I&N Dec. 216, 220 (BIA 2025). The BIA cited *Matter of Yajure Hurtado* to sustain DHS's appeal and vacate the Bond Order of Petitioner. Exhibit B.

9. Petitioner's detention under 8 U.S.C. § 1225(b)(2)(A) violates the plain language of the Immigration and Nationality Act and contradicts basic precepts of statutory construction and legal analysis.

10. A correct reading of the INA would conclude that Section 1225(b)(2)(A) applies to recent arrivals who are apprehended near the border. It does not apply to individuals, like Petitioner, who are accused of entering the country more than decade ago and are arrested more than one hundred miles north of the U.S.-Mexico border during a routine annual ICE check-in.

11. The correct reading of the statute is discerned from text, case law, and decades of agency practice. Petitioner should not be deemed detained under Section 1225(b)(2) but under Section 1226(a) and, thus, eligible for bond. Respondents' interpretation to the contrary is a dangerous transgression of the INA, the Administrative Procedure Act, and Due Process.

12. Petitioner seeks a writ of habeas corpus requiring his release from detention upon payment of the \$10,000.00 bond.

CUSTODY

13. Petitioner is in the physical custody of Respondent Miguel Vergara, Field Office Director for Detention and Removal, Immigration and Customs Enforcement (ICE), the Department of Homeland Security (DHS), and Respondent Bobby Thompson, Warden of the South Texas Detention Complex (STDC) in Pearsall, Texas. Petitioner is detained at the STDC in Pearsall, Texas. The STDC contracts with the DHS to detain aliens.

JURISDICTION

14. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article 1, section 9, clause 2 of the United States Constitution (the Suspension

Clause).

15. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment act, 28 U.S.C. § 2201 et seq., and the All Writs Act, 28 U.S.C. § 1651.

VENUE

16. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493- 500 (1973), venue lies in the United States District Court for the Western District of Texas, San Antonio Division because Petitioner is detained in Pearsall, Frio County, Texas, within the environs of the San Antonio Division.

17. Venue is also proper pursuant to 28 U.S.C. § 1391(e) because (a) Respondents are employees, officers, and agencies of the United States, and (b) a substantial part of the events or omissions giving rise to the claims occurred in the Western District of Texas.

REQUIREMENTS OF 28 U.S.C. § 2243

18. The Court must grant a petition for writ of habeas corpus or order a respondent to show cause forthwith, unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, a respondent must file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*

19. Habeas corpus is “perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). “The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application.” *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

PARTIES

20. Petitioner Escobar is a national and citizen of Guatemala. Exhibit D.

21. Respondent Kristi Noem is the Secretary of the United States Department of Homeland Security. She is responsible for the implementation and enforcement of the Immigration and Nationality Act, and oversees ICE, which is responsible for Petitioner's detention. Secretary Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

22. Respondent Miguel Vergara is the Field Office Director of ICE's Enforcement and Removal Operations division. As such, Mr. Vergara is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity.

23. Respondent Todd M. Lyons is the Acting Director of United States Immigration and Customs Enforcement, and responsible for Petitioner's detention. He is named in his official capacity.

24. 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 is a component agency. She is sued in her official capacity.

25. Respondent Bobby Thompson is the warden of the South Texas Detention Complex facility in Pearsall, Texas. He is Petitioner's immediate custodian and works within the Western District of Texas, San Antonio Division and is sued in his official capacity.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

26. Petitioner exhausted his administrative remedies to the extent required by law. Specifically, (a) Petitioner sought and obtained a \$10,000 bond for release from custody from an immigration judge, (b) DHS appealed to the Board of Immigration Appeals, and (c) the BIA sustained DHS's appeal and vacated the bond order, holding that the immigration court did not have jurisdiction to conduct a bond hearing at all. Exhibit B. Petitioner's only remedy is by way of this judicial action.

LEGAL FRAMEWORK

27. The Immigration and Nationality Act (“INA”) prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.

28. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an immigration judge. *See* 8 U.S.C. § 1229a. Individuals detained under Section 1226(a) are generally entitled to a bond hearing at the outset of their detention. *See* 8 C.F.R. §§ 1003.19(a), 1236.1(d). However, noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention under Section 1226(c). *See* 8 U.S.C. § 1226(c).

29. Second, the INA provides for mandatory detention of two groups of noncitizens: The first group consists of those who are subject to expedited removal for being apprehended upon arrival near the border or for being unable to show that they have been physically present in the United States for more than two years until a determination has been made as to whether they have a credible fear of persecution. 8 U.S.C. § 1225(b)(1). The second group subject to mandatory detention consists of anyone alleged to be an “applicant for admission” who is “seeking admission” and whom an “examining immigration officer determines . . . is not clearly and beyond a doubt entitled to be admitted.” *See* 8 U.S.C. § 1225(b)(2)(A).

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

31. Petitioner’s case concerns the detention provisions described in Section 1226(a) and Section 1225(b)(2).

32. The detention provisions in Section 1226(a) and Section 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104–208, Div. C, §§ 302–03, 110 Stat. 3009–546, 3009–582 to 3009–583, 3009–585. Section

1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub.L. No.119-1, 139 Stat. 3 (2025).

33. Following the enactment of the IIRIRA, EOIR drafted regulations explaining that, in general, people who entered the country without inspection were considered detained under Section 1226(a), not under Section 1225. *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).

34. In the decades that followed the creation of this statutory and regulatory language, people who entered without inspection were placed in standard removal proceedings and received bond hearings, unless their criminal histories triggered the requirements for mandatory detention outlined in 8 U.S.C. § 1226(c) (concerning mandatory detention of “criminal aliens”). *See also* 8 C.F.R. 236.1(c)(8) (describing criteria for release). That practice was consistent with many decades of prior practice, in which noncitizens who were not deemed “arriving” were entitled to a custody hearing before an immigration judge or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply “restates” the detention authority previously found at § 1252(a)); *see also* list of unpublished BIA cases. Exhibit K.

35. On July 8, 2025, ICE, announced a new policy “in coordination with” the Department of Justice that rejected the well-established understanding of the statutory framework and reversed decades of practice. Exhibit J.

36. The new policy, entitled “Interim Guidance Regarding Detention Authority for Applicants for Admission,”² asserts that all persons who entered the United States without inspection shall now be deemed “applicants for admission” under 8 U.S.C. § 1225(a)(1), and

² Available at <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applicants-for-admission>.

therefore subject to mandatory detention provision under Section 1225(b)(2)(A). The policy applies regardless of when or where a person was apprehended, and it affects those who have resided in the United States for months, years, and even decades. Exhibit J.

37. On September 5, 2025, almost 2 weeks after Petitioner's bond hearing, the Board of Immigration Appeals (BIA) issued an opinion adopting this interpretation of the detention statutes. *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 220 (BIA 2025). The decision holds that "aliens who are present in the United States without admission are applicants for admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings." *Id.*

38. ICE, certain immigration courts and now, the Board of Immigration Appeals, have adopted this position even though federal courts have rejected this very argument. Even before the announcement of this new DHS policy, in the immigration court in Tacoma, Washington, immigration judges stopped providing bond hearings for persons who entered the United States without inspection and who have since resided here. The U.S. District Court in the Western District of Washington found that such a reading of the INA is likely unlawful and that Section 1226(a), not Section 1225(b), applies to noncitizens who are neither apprehended upon arrival to the United States nor within the first two years of presence. *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1245 (W.D. Wash. 2025) (granting TRO relief).

39. In the Central District of California, detainees sought a nationwide class action challenging this policy. *See Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM, Class Action Compl. & Am. Pet. for Habeas Corpus, Dkt. 15 (C.D. Cal. July 28, 2025). The district court granted a temporary restraining order for the named class members. *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM, Order Granting Pet'rs' Ex Parte Appl. for TRO & Order to Show Cause, Dkt. 5 (C.D. Cal. July 28, 2025). The court scheduled for October 17 a hearing on class

certification and on a motion for summary judgment.

40. After exhaustive research on the pending issues, Petitioner's counsel was unable to find a single district court in the United States to have considered and accepted this DHS-DOJ interpretation.³ By contrast, every other federal court that has considered the question rejected the DHS-DOJ interpretation of the statutes. *See Vasquez Garcia v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025) (granting habeas relief); *Lopez-Campos v. Raycraft*, --- F. Supp. 3d ----, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025) (granting habeas relief); *Kostak v. Trump*, No. 3:25-cv-01093-JE, Doc. 20 (W.D. La. Aug. 27, 2025) (granting preliminary relief); *Benitez v. Noem*, No. 5:25-cv-02190, Doc. 11 (C.D. Cal. Aug. 26, 2025) (granting preliminary relief); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025) (granting habeas relief); *Romero v. Hyde*, --- F. Supp. 3d ----, 2025 WL 2403827 (D. Mass. Aug. 19, 2025) (granting habeas relief); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025) (granting habeas relief); *Aguilar Maldonado v. Olson*, No. 25-cv-3142, 2025 WL 2374411 (D. Minn. Aug. 15, 2025) (granting habeas relief); *Dos Santos v. Noem*, No. 1:25-cv-12052-JEK, 2025 WL 2370988 (D. Mass. Aug. 14, 2025) (granting habeas relief); *Rocha Rosado v. Figueroa*, No. CV 25-02157, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025) (report and recommendation to grant habeas relief), adopted, 2025 WL 2349133 (D. Ariz. Aug. 13, 2025) (granting habeas relief); *Lopez Benitez v. Francis*, No. 25-Civ-5937, 2025 WL 2267803 (S.D.N.Y. Aug. 8, 2025) (granting individual habeas relief); *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01874-SSS-BFM, *13 (C.D. Cal. July 28, 2025) (granting preliminary relief); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238, at *9 (D. Mass. July 24, 2025) (denying reconsideration of individual habeas relief); *Gomes v. Hyde*, No. 1:25-cv-11571-JEK, 2025 WL 1869299, at *8 (D. Mass. July 7, 2025) (granting individual habeas relief); *Salazar v. Dedos*, No. 1:25-cv-00835-DHU-JMR, 2025 LX

³ *Chavez v. Noem*, 2025 WL 2730228 (E.D. Cal. Sept. 25, 2025) (denied injunctive relief, writ pending).

465474 (D.N.M. Sep. 17, 2025) (granting habeas relief and ordering a bond hearing).

41. The joint DHS-DOJ interpretation of Section 1225(b)(2) defies the INA's text, the INA's logic, and the well-established case law and practice interpreting this provision. There are five separate grounds on which the DHS-DOJ interpretation of law fails basic methods of statutory construction.

42. First, the DHS-DOJ reading of the statute is wrong because it is incompatible with the title of Section 1225, "Inspection by Immigration Officers; *Expedited Removal of Inadmissible Arriving Aliens*; Referral for Hearing." 8 U.S.C. § 1225 (emphasis added). As the Supreme Court has explained, "the title of a statute and the heading of a section are tools available for the resolution of a doubt" about the meaning of a statute. *Almendarez-Torres v. United States*, 523 U.S. 224, 234 (1998). Section 1225's title refers to "arriving" noncitizens who are put in "expedited removal proceedings." *Id.* These are the people to whom Section 1225(a)(1)'s definition of "applicant for admission" and Section 1225(b)(2)(A)'s mandatory detention provisions apply. The government gravely errs by applying the definition of "applicant for admission" to people who are not "arriving" and not in "expedited removal proceedings." In this case, Petitioner was not "arriving" or "seeking admission" when he was detained on **June 10, 2025** more than 100 miles north of the U.S. – Mexico border, and more than a decade after he allegedly crossed it. Nor was he put in expedited removal proceedings. Section 1225(b)(2)(A) cannot apply to him.

43. Second, the DHS-DOJ reading violates the INA because it ignores the subject-matter of Section 1225. Section 1225 describes the procedures for the inspection and expedited removal of people detained at the border who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A). The Supreme Court itself noted that the mandatory detention scheme in Section 1225(b)(2)(A) applies "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*,

583 U.S. 281, 287 (2018). Throughout, Section 1225's text makes clear that it concerns apprehensions and "expedited" procedures conducted at the border—not actions taken far from the border, as in Petitioner's case. That the DHS-DOJ reading of the statute ignores this context is a sure sign that it is wrong. "It is a fundamental canon of statutory construction," the Supreme Court explained, "that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." *Davis v. Michigan Dep't of Treasury*, 489 U.S. 803, 809 (1989). The context of Section 1225 demonstrates that subsections 1225(a)(1) and 1225(b)(2)(A) apply to those apprehended at or near the border upon arrival or shortly thereafter. They do not apply to those who are arrested in the interior of the United States months, years or a decade or more later. The DHS-DOJ reading of the statute is an act of cherry-picking a definitional phrase from one context and applying it to another context where it does not belong.

44. Third, the DHS-DOJ reading of Section 1225(b)(2)(A) is wrong because it requires courts to ignore numerous words in the text of that very subsection. As Justice Antonin Scalia and his co-author, Bryan A. Garner, explain: "If possible, every word and every provision is to be given effect." SCALIA AND GARNER, *READING LAW: THE INTERPRETATION OF LEGAL TEXTS* AT 174 (2012). A good interpretation of a statute will not result in "extra" words. Yet that is exactly what occurs if one tries to apply Section 1225(b)(2)(A) to Petitioner's case. Here is the full text of Section 1225(b)(2)(A), the mandatory-detention provision:

[I]n the case of an alien who is an applicant for admission, if the *examining immigration officer* determines that an alien [2] *seeking* admission is [3] *not clearly and beyond a doubt entitled to be admitted*, the alien shall be detained for a proceeding under section 240.

8 U.S.C. § 1225(b)(2)(A) (emphasis and bracketed numbers added). Petitioner was never seen by an "examining immigration officer." There was never a "determin[ation] that . . ." he was "not clearly and beyond a doubt entitled to be admitted." Nor was Petitioner "seeking" anything when he did what

he was asked to do: report in person to the annual ICE check-in. The reason the DHS-DOJ application of the statute has all of these “extra” words is that the statute applies only to those who are “arriving” at the border and are candidates for “expedited removal.” In *that* context, those “extra” words make sense, as there will be an “examining immigration officer” and there will be a determination of potential eligibility for immigration relief. These procedures are uniquely tethered to the border and they are described in exquisite detail in the subsections of Section 1225. But Section 1225’s procedures have no purchase in the entirely different context of someone, in Petitioner’s position, who is detained far from the border and decades after he has allegedly entered. Only by ignoring all of these “extra” words can DHS-DOJ claim to make its reading of the statute fit Petitioner. That is another strong indication that their reading is wrong.

45. Further, Respondents’ proposed interpretation of the statute ignores the plain meaning of the phrase “seeking admission.” *Martinez v. Hyde*, No. CV 25-11613-BEM, 2025 WL 2084238, at *6 (D. Mass July 24, 2025). “Seeking” means “asking for” or “trying to acquire or gain.” Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/seeking>. And the use of a present participle, “seeking,” “necessarily implies some sort of present-tense action.” *Martinez*, 2025 WL 2084238, at *6. The term “admission” is defined as “the lawful entry of the alien into the United States after inspection and authorization by an immigration officer.” 8 U.S.C. § 1101(a)(13)(A). And “entry” has long been understood to mean “a crossing into the territorial limits of the United States.” *Hing Sum v. Holder*, 602 F.3d 1092, 1100-01 (9th Cir. 2010) (quoting *Matter of Pierre*, 14 I & N Dec. 467, 468 (1973)). To piece this together, the phrase “seeking admission” means that one must be actively “seeking” “lawful entry.” See *Lopez Benitez v. Francis*, No. 25-Civ-5937, 2025 U.S. Dist. LEXIS 153952, 2025 WL 2267803 at *7 (S.D.N.Y. Aug. 8, 2025).⁴

⁴ This understanding is further buttressed by the fact that “lawful entry” may occur only after “inspection and authorization by an immigration officer,” see 8 U.S.C. § 1101(a)(13), a process that typically must occur at the border or other port of entry. See *Posos-Sanchez v. Garland*, 3 F.4th 1176, 1183 (9th Cir. 2021) (explaining that “inspection and authorization” must “take place at a ‘port of entry’” for one to be considered to have “lawfully entered”). The regulations that set out

46. However, Petitioner was not seeking admission when he went to his annual ICE check-in because he had already entered the United States over a decade ago. Nor was he seeking admission in 2013. He was already in the United States. If anything, Petitioner was seeking to *remain* in the United States. As *Lopez-Benitez* noted:

[S]omeone who enters a movie theater without purchasing a ticket and then proceeds to sit through the first few minutes of a film would not ordinarily then be described as "seeking admission" to the theater. Rather, that person would be described as already present there. Even if that person, after being detected, offered to pay for a ticket, one would not ordinarily describe them as "seeking admission" (or "seeking" "lawful entry") at that point—one would say that they had entered unlawfully but now seek a lawful [*12] means of remaining there. As § 1225(b)(2)(A) applies only to those noncitizens who are actively “seeking admission” to the United States, it cannot, according to its ordinary meaning, apply to [petitioner], because he has already been residing in the United States for more than two years

Lopez Benitez, 2025 WL 2371588, at *7; *see also Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, 2025 U.S. Dist. LEXIS 169423, 2025 WL 2496379, at *6 (E.D. Mich. Aug. 29, 2025) (“[S]eeking ‘admission’ implies action — something that is currently occurring, and in this instance, would most logically occur at the border upon inspection.”).

47. Fourth, the DHS-DOJ reading of Section 1225(b)(2)(A) violates the INA because it renders a neighboring subsection superfluous. In Section 1226(c), the INA describes people who would otherwise be eligible for bond under Section 1226(a), but are rendered ineligible for bond because of their criminal histories. *See* 8 U.S.C. § 1226(c). Of particular interest, subsections 1226(c)(1)(E)(i)-(ii) address people who are alleged to be inadmissible under 8 § U.S.C. 1182(a)(6)(A) as aliens present without inspection. According to these subsections, such people are ineligible for bond *only* if they are also “charged with, . . . arrested for, . . . convicted of . . .” certain

“inspection procedures” make clear that inspection is a procedure that occurs at ports of entry. *See* 8 C.F.R. § 235.1(a) (“Application to lawfully enter the United States shall be made in person to an immigration officer at a U.S. port-of-entry when the port is open for inspection.”).

crimes. *See* 8 U.S.C. § 1226(c)(1)(E)(i)-(ii). In short, Section 1226(c) requires mandatory detention for people who have entered without inspection *and* have criminal histories. But if the DHS-DOJ reading were correct, then all people who entered without inspection would be mandatorily detained, regardless of whether they had criminal histories or not. Subsections 1226(c)(1)(E)(i) and (ii) would be superfluous, if the DHS-DOJ position were correct, because Section 1225(b)(2)(A) would govern all cases where someone was alleged to have entered without inspection. But we know that cannot be right, as these subsections of 1226(c)(1) were the most recent subsections added by Congress to the INA just this year in the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. ____ (2025) (adding (E)(i) and (E)(ii) to Section 1226(c)(1)). Congress would not have added the subsections only to see these additions rendered completely superfluous. That is another sign that the government's reading of Section 1225(b)(2)(A) is wrong.⁵

48. Fifth, the DHS-DOJ reading violates the INA because it ignores the textual references to “warrant” in Section 1226(a). DHS issued a “warrant” for the arrest of Petitioner, Form I-200, dated June 30, 2013, is signed by the “Acting Field Operations Supervisor [name redacted]. It is clearly labeled: “Warrant for Arrest of Alien.” Its heading specifically identifies “Section[] 236 of the Immigration and Nationality Act.” Exhibit G. The text of the INA makes clear that a person arrested by warrant is detained under 1226(a), not 1225(b)(2)(A). For example, the opening sentence of 1226(a) states:

Arrest, detention, and release.—On a *warrant* issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States.

8 U.S.C. § 1226(a) (emphasis). By contrast, the word “warrant” does not appear anywhere in Section

⁵ As the Supreme Court has explained, “It is our duty to give effect, if possible, to every clause and word of a statute.” *Duncan v. Walker*, 533 U.S. 167, 174 (2001); *see Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1259 (W.D. Wash. 2025); *see also* SCALIA AND GARNER, *READING LAW*, AT 174 (“If possible, every word and every provision is to be given effect. . . None should needlessly be given an interpretation that cause it to . . . have no consequence.”).

1225, a sure sign that Congress intended those arrested by warrant to be evaluated under Section 1226(a) and, thus, eligible for bond. Likewise, the Supreme Court noted that Section 1226(a) — INA 236(a) — “authorizes detention only ‘[o]n a warrant issued’ by the Attorney General leading to the alien’s arrest.” *Jennings v. Rodriguez*, 583 U.S. 281, 302 (2018). Other federal courts to consider this issue have agreed that an immigration arrest by warrant subjects a person to detention under 1226(a), thus making them bond eligible. *See, e.g., Lopez Benitez v. Francis*, 2025 WL 2371588, at *4 (S.D.N.Y. Aug. 13, 2025) (pointing to warrant of arrest for noncitizen as evidence that “unequivocally establish[es]” he is “detained pursuant to . . . § 1226(a) [236(a)]”).⁶ But the DHS-DOJ reading of the statute ignores the warrant altogether, choosing to apply Section 1225(b)(2)(A) even though Section 1225 never mentions arrests by warrant and, frankly, contemplates only border arrests, where no warrant would be required. This is another indication that Respondents badly misread Sections 1225 and 1226.

49. For the five distinct reasons outlined above, the mandatory detention provision of Section 1225(b)(2)(A) does not apply to people like Petitioner.

RELEVANT FACTS

50. Petitioner is a citizen and national of Guatemala who entered the United States as an unaccompanied juvenile on June 16, 2013, and released upon his own recognizance by DHS into the custody of Baptist Child and Family Services. Exhibit C, P. 9; Exhibit D; Exhibit H.

51. On July 21, 2103, through the Office of Refugee Settlement, U.S. Health and Human Services, Petitioner was reunited with his mother, who resided in Houston, Texas. Exhibit D.

52. On June 20, 2013, DHS issued to Petitioner a “notice to appear” before an

⁶ *See id.* (stating that facts of the case “can support only one conclusion—that [the noncitizen] was not mandatorily detained as a noncitizen ‘seeking admission’ under § 1225(b) [235(b)], but rather . . . under §1226(a) [236(a)]”) (bracketed INA sections added).

immigration judge without designating (a) the location of the immigration court, (b) the date of the hearing, or (c) the time of the hearing and charge of removal under 8 U.S.C. § 1182(a)(6)(A)(i), INA § 212(a)(6)(A)(i). Exhibit C, p. 1. Petitioner's mother retained counsel who submitted an asylum application with the immigration court.

53. For the past 12 years, Petitioner has continually resided in Texas, the state where he met and married his wife, is a father to three minor children, U.S. citizens all.⁷ Petitioner has no criminal history. Exhibit A.

54. On June 10, 2025, Petitioner went to an ICE office for an annual check-in and was informed that he had an Order of Removal since March 20, 2018.⁸ ICE officials detained Petitioner and on June 16, 2025, DHS filed an additional "notice to appear" with the identical factual allegations and ground of inadmissibility as in the 2013 removal case.⁹ Exhibit C, pp. 9-11.

55. Petitioner filed a motion for bond the Immigration Court, Pearsall, Texas. Exhibit E.

56. On July 22, 2015, a bond hearing was held before Immigration Judge Eric Tijerina who received evidence, heard argument of counsel, including the argument of DHS counsel under the "new policy" of July 8 2025 that anyone alleged to be inadmissible under Section 1182(a)(6)(A)(i) was an "applicant for admission" subject to mandatory detention under Section 1225(b)(2)(A). The Immigration Judge did not abandon decades of precedent to agree with this incorrect interpretation of the INA; the Immigration Judge granted bond to Petitioner in the amount of \$10,000.00. Exhibit A.

57. DHS appealed. Exhibit F.

58. On September 5, 2025, the Board of Immigration Appeals endorsed the "new policy" in *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 220 (BIA 2025). On September 26, 2025, the BIA

⁷ Petitioner's spouse has a pending petition with USCIS to obtain Petitioner's lawful permanent residence.

⁸ The removal order was recently vacated by an immigration judge and the case is set for hearing on Petitioner's relief from removal. Exhibit H. In addition to the asylum relief requested in 2013, Petitioner is eligible to adjust his status to that of a lawful permanent resident pursuant to 8 U.S.C. § 1229b(b).

⁹ On DHS's motion, an immigration judge dismissed the 2025 removal case on September 10, 2025. Exhibit F.

sustained DHS's appeal and vacated the IJ's bond order. Exhibit B. Citing *Yajure Hurtado*, a single "Temporary Appellate Immigration Judge" declared that "The Immigration Judge did not have the authority to consider [Escobar Chang's] request for a bond redetermination." Exhibit B, p. 1. The BIA ordered the bond order to be vacated. Exhibit B, p. 2.

59. Although Petitioner is detained, he is scheduled to appear before Immigration Judge Gary E. Endelman on November 18, 2025, at the Immigration Court, 1919 Smith St., 14th Floor, Houston, Texas on the initial 2013 NTA charge of removal. Exhibit I.

CLAIMS FOR RELIEF

COUNT I: VIOLATIONS OF THE INA

60. Petitioner incorporates by reference the factual allegations and legal arguments set forth in the preceding paragraphs.

61. For the reasons described above, the mandatory detention provision of 8 U.S.C. § 1225(b)(2) cannot not apply to all noncitizens in the United States who are subject to the specified grounds of inadmissibility, entry without inspection. As relevant here, this mandatory detention statute cannot be read to apply to those who are accused of residing in the United States for decades prior to apprehension and removal proceedings. A person with long-term residence in the United States who is alleged to be removable should be deemed detained under Section 1226(a), unless they are subject to Section 1226(c) or Section 1231. Indeed, for the reasons described in all the paragraphs above, the mandatory detention statute cannot be read to apply to someone in Petitioner's circumstances.¹⁰

62. The application of § 1225(b)(2)(A) to Petitioner unlawfully mandates his continued detention and violates the INA.

¹⁰ After arresting Petitioner on June 10, 2025, DHS filed a new NTA alleging the identical facts and ground for removal as the June 30, 2013 NTA. After realizing its error, DHS then moved the IJ to dismiss the new removal proceeding with the intent to deport Petitioner under the 2018 *In-absentia* Order of Removal. The IJ granted DHS's motion over Petitioner's objection. However, Petitioner then filed a Motion to Reopen the prior 2013 proceeding and an Immigration Judge in Houston granted Petitioner's Motion and vacated the 2018 Removal Order. That case is set for a preliminary hearing on November 18, 2025. Exhibit H.

COUNT II: VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT

63. Petitioner incorporates by reference the factual allegations and legal arguments set forth in the preceding paragraphs.

64. Under the Administrative Procedure Act, a court must “hold unlawful and set aside agency action” that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law,” that is “contrary to constitutional right [or] power,” or that is “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right.” 5 U.S.C. § 706(2)(A)-(C).

65. Respondents’ detention of Petitioner pursuant to Section 1225(b)(2) is arbitrary and capricious. Respondents’ detention of Petitioner violates the INA and the Fifth Amendment. Respondents do not have statutory authority under Section 1225(b)(2) to detain Petitioner.

66. Petitioner’s detention is arbitrary, capricious, an abuse of discretion, violative of the Constitution, and without statutory authority in violation of 5 U.S.C. § 706(2).

COUNT III: VIOLATION OF DUE PROCESS

67. Petitioner incorporates by reference the factual allegations and legal arguments set forth in the preceding paragraphs.

68. 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).

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

70. Respondents’ continued detention of Petitioner and vacatur of a proper and lawful Order authorizing Petitioner’s release from custody upon payment of bond violates his right to due process.

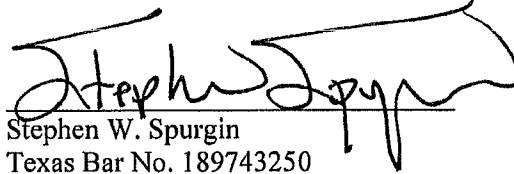
PRAYER FOR RELIEF

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

- a. Assume jurisdiction over this matter; .
- b. Issue a writ of habeas corpus requiring Respondents to release Petitioner upon payment of a \$10,000.00 bond to the United States Department of Homeland Security;
- c. 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 justified basis under law; and
- d. Grant such other relief that the Court deems proper.

Date: September 30, 2025

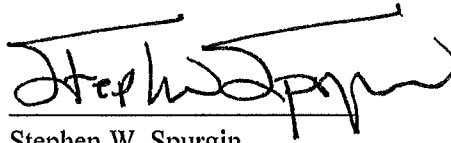
Respectfully submitted,



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

I, Stephen W. Spurgin, am submitting this verification on behalf of Petitioner because I am his attorney and Petitioner is in custody some 600 miles from my office in West Texas with limited ability to sign documents. I have discussed with Petitioner the events described in this Petition and have reviewed the documents corroborating those events. I hereby verify that the factual statements made in this Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

A handwritten signature in black ink, appearing to read "Stephen W. Spurgin", written over a horizontal line.

Stephen W. Spurgin
September 30, 2025