UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

JOSE ARISTIDES HERNANDEZ GUTIERREZ [redacted] *Petitioner* v. KRISTI NOEM, in her official capacity as U.S. Secretary of Homeland Security; PAMELA JO BONDI, in her official capacity as Attorney General of the United States; RUSSELL HOTT, in his official capacity as Washington, D.C. Field Office Director, Immigration and Customs Enforcement; and JEFFREY CRAWFORD, in his official capacity as the Warden for Farmville Detention Center. *Respondents*.	Case No. 1:25-cv-1744 **PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241**

INTRODUCTION

1. Petitioner Jose Aristides Hernandez Gutierrez ("Mr. Hernandez") is a native and citizen of El Salvador who has resided in the United States since he first entered the country twenty-four years ago. Mr. Hernandez has not been convicted of any crimes in the United States, yet on September 23, 2025, U.S. Immigration and Customs Enforcement ("ICE") stopped him on his way to work, took him into custody, and placed him in removal proceedings.

2. The Department of Homeland Security ("DHS") has determined that Mr. Hernandez is subject to mandatory detention under 8 U.S.C. § 1225(b)(2), concluding that Mr. Hernandez is "seeking admission" into the country he has lived in for almost a quarter of a century.

3. DHS's interpretation of its detention authority under 8 U.S.C. § 1225(b)(2) marks a complete reversal of the interpretation of the statute that the government has embraced since its inception three decades ago, its prior practice, Supreme Court precedent, and the plain language of the Immigration and Nationality Act ("INA").

4. This Court should grant Mr. Hernandez's petition for writ of habeas corpus and order his release from immigration custody or, in the alternative, require the Executive Office of Immigration Review ("EOIR") to conduct a bond hearing under 8 U.S.C. § 1226(a) at which DHS bears the burden to prove that continued detention is required to protect the community and/or ensure his appearance for future removal proceedings.

JURISDICTION AND VENUE

5. Respondents are currently detaining Mr. Hernandez at the Farmville Detention Center in Farmville, Virginia.

6. This action arises under the Due Process Clause of the Fifth Amendment and the INA, 8 U.S.C. § 1101 et seq.

7. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and 28 U.S.C. §§ 2201-02 (declaratory relief). Mr. Hernandez's detention by Respondents is a "severe restraint" on his individual liberty "in custody in violation of the ... laws … of the United States." *See Hensley v. Municipal Court, San Jose-Milpitas Jud. Dist.*, 411 U.S. 345, 351 (1973).

8. 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.

9. Venue lies in the United States District Court for the Eastern District of Virginia, the judicial district in which Mr. Hernandez is detained when the petition was filed. 28 U.S.C. § 1391(e); *Rumsfeld v. Padilla*, 542 U.S. 426, 434, 447 (2004).

REQUIREMENTS OF 28 U.S.C. § 2243

10. Under 28 U.S.C. § 2243, a court "entertaining an application for a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant . . . is not entitled thereto." 28 U.S.C. § 2243. If the Court issues an order to show cause, Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

11. 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).

12. Mr. Hernandez, who has resided in the United States for over twenty-four years, has been unlawfully detained for over two weeks without any opportunity to challenge his detention. The reading of 8 U.S.C. § 1225(b)(2) offered by DHS to argue that his detention is mandated by the INA has been almost universally rejected by district courts across the country, including this Court, over the past three months. Allowing Respondents to continue detaining Mr. Hernandez without the opportunity to seek release on bond based on a strained reading of the

INA that has been overwhelmingly rejected only compounds the due process concerns in this case.

13. Mr. Hernandez requests the Court issue an Order to Show Cause, and direct Respondents to file a response within three days, given the significant and unlawful restraint on Mr. Hernandez's liberty.

PARTIES

14. Petitioner Jose Aristides Hernandez Gutierrez is a native and citizen of El Salvador who has been in immigration detention since September 23, 2025. ICE is currently detaining him at Farmville Detention Center in Farmville, Virginia.

15. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the INA, and oversees ICE, the agency responsible for Mr. Hernandez's detention. Secretary Noem has ultimate custodial authority over Mr. Hernandez and is sued in her official capacity.

16. Respondent Pamela Jo Bondi is the United States Attorney General. She has supervisory authority over the Executive Office of Immigration Review, which oversees the immigration courts and the Board of Immigration Appeals. She is sued in her official capacity.

17. Respondent Russell Hott is the Field Office Director for ICE's Washington D.C. Field Office. He oversees the operation of detention facilities within the Washington D.C. Field Office's area of responsibility, including Farmville Detention Center. Mr. Hott is sued in his official capacity.

18. Respondent Jeffrey Crawford is the Warden of Farmville Detention Facility and is the immediate custodian of Mr. Hernandez. Mr. Crawford is sued in his official capacity.

EXHAUSTION

19. The failure to exhaust administrative remedies does not bar Mr. Hernandez's claims unless "Congress specifically mandates" exhaustion. *Miranda v. Garland*, 34 F.4th 338, 351 (4th Cir. 2022) (1993) (quoting *McCarthy v. Madigan*, 503. U.S. 140, 144 (1992)).

20. Moreover, because Mr. Hernandez's continued detention violates his constitutional right to due process, administrative exhaustion is excused. *See Guitard v. U.S. Sec'y of the Navy*, 967 F.2d 737, 741 (2d Cir. 1992) ("Exhaustion of administrative remedies may not be required when . . . a plaintiff has raised a 'substantial constitutional question.'").

21. Although the Court may impose exhaustion requirements as a prudential matter, it should not do so in this case because seeking administrative relief from either DHS or EOIR in this case would be futile. Critically, the Board of Immigration Appeals ("Board") recently issued a precedential decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), adopting the new interpretation of 8 U.S.C. § 1225(b)(2) that DHS announced in its recent July 8, 2025 policy memorandum. *Matter of Yajure Hurtado* holds that noncitizens who entered the United States without inspection at any point are considered to be "arriving aliens" who are "seeking admission" and therefore subject to mandatory detention under 8 U.S.C. § 1225(b)(2). Although, as discussed below, this decision is legally erroneous, all immigration judges—including Appellate Immigration Judges at the Board of Immigration Appeals—are obligated to apply the Board's published precedent and deny any motion for a custody redetermination filed by Mr. Hernandez. 8 C.F.R. § 103.10(b). For this reason, Mr. Hernandez has not gone through the futile exercise of moving the immigration court for release on bond.

STATEMENT OF FACTS

22. Mr. Hernandez entered the United States twenty-four years ago without inspection and has resided continuously in this country ever since, spending the last twenty-one years in the Washington, DC metro area.

23. Over the course of the past twenty-four years, Mr. Hernandez has established strong ties to the community. He has a close relationship with his sister and her three U.S. citizen children, all of whom also reside in the Washington, DC area.

24. Further, Mr. Hernandez has never been convicted of a crime during his time in the United States.

25. On September 23, 2025, ICE officers stopped Mr. Hernandez while he was riding to work with a friend. Despite the fact that ICE has no authority to enforce traffic laws, they pulled over the vehicle Mr. Hernandez was riding in. On information and belief, Mr. Hernadez was not carrying identification or any other documentation that would have allowed ICE to establish his immigration status. Nevertheless, ICE promptly arrested him and took him into custody at Prince William Detention Center before transferring him to Farmville Detention Center where he remains. *See* Ex. A, ICE Detainee Locator Search.

26. Shortly after being taken into custody, Mr. Hernandez was provided with a Notice to Appear placing him in removal proceedings under 8 U.S.C. § 1229a.

LEGAL BACKGROUND

27. In 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Pub. L. 104-208, which set forth separates procedures for the removal and detention of arriving or recently arrived noncitizens and noncitizens who have entered and established a presence in the United States, even those who did so in violation of the immigration laws.

Compare 8 U.S.C. § 1225, *with* 8 U.S.C. §§ 1226, 1229a. For individuals with an established presence in the United States, the INA mandates that "an immigration judge shall conduct proceedings for deciding the inadmissibility or deportability of a [noncitizen]." 8 U.S.C. § 1229a(a)(1). Removal proceedings under 8 U.S.C. § 1229a(a)(1) "shall be the sole and exclusive procedure from the United States" unless otherwise specified in the INA. 8 U.S.C. § 1229a(a)(3).

28. During the pendency of standard removal proceedings under 8 U.S.C. § 1229a, § 1226 provides for the detention of noncitizens already in the United States, even those who entered illegally or without inspection. For noncitizens subject to detention under § 1226, § 1226(a) sets for the default rule, giving the government the discretion to arrest and detain noncitizens "pending a decision on whether the alien is to be removed from the United States," while § 1226(c) mandates the detention of certain classes of criminal noncitizens. 8 U.S.C. § 1226(a), (c). After an initial arrest, a noncitizen subject to detention under § 1226(a) may continue to be detained, released on conditional parole, or released on a bond of at least $1,500. *Id.*

29. Once a noncitizen is detained under § 1226(a), DHS makes an initial custody determination. 8 C.F.R. §§ 1003.19(a), 1236.1(d). The noncitizen may have DHS's initial custody determination reviewed by an immigration judge, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), and ultimately by the Board, *see* 8 C.F.R. § 1236.1(d)(3).

30. In contrast to the discretionary detention scheme established for noncitizens already in the United States, IIRIRA created a separate, expedited removal process for certain "applicants for admission" deemed to be "arriving aliens." 8 U.S.C. § 1225(b). The INA defines an applicant for admission as a noncitizen "present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including a

[noncitizen] who is brought to the United States after having been interdicted in international or United States waters)." 8 U.S.C. § 1225(a)(1). The INA further clarifies that the term "application for admission" has "reference to the application for admission *into* the United States," making clear that the term applies to those applying to enter into the United States. 8 U.S.C. § 1101(a)(4) (emphasis added). Notably, individuals subject to expedited removal are not eligible for bond pending completion of their removal hearings. *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018); *see id.* at 303 (distinguishing individuals subject to § 1225(b) from those "already present in the United States").

31. Critically, expedited removal proceedings do not apply to all "applicants for admission." Instead, they may be applied only to: (1) individuals who are arriving in the United States at a port of entry without valid documents; and (2) those without valid documents who have been in the United States for less than two years and have not been admitted or paroled. 8 U.S.C. § 1225(b)(1)(A)(iii)(II); *see Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 109 (2020). Further, this second subset of individuals—noncitizens who have been in the United States for less than two years and have not been admitted or paroled—only become subject to expedited removal if so designated by DHS. *See* 8 U.S.C. § 1225(b)(1)(A)(iii)(I) (granting discretionary authority to apply expedited removal to any or all noncitizens described in 8 U.S.C. § 1225(b)(1)(A)(iii)(II)); *see also* Notice, Designating Aliens for Expedited Removal, 90 Fed. Reg. 8139, 8139 (Jan. 24, 2025) (designating the entire subset of noncitizens described in 8 U.S.C. § 1225(b)(1)(A)(iii)(II) subject to expedited removal: i.e., noncitizens "determined to be inadmissible under [8 U.S.C. §§ 1182(a)(6)(C) or (a)(7)] who have not been admitted or paroled into the United States and who have not affirmatively shown . . . that they have been

physically present in the United States continuously for the two-year period immediately preceding the date of the determination of inadmissibility").

32. Noncitizens placed in expedited removal proceedings are referred to standard removal proceedings under § 1229a if they establish that they have a credible fear of persecution if removed. *See* 8 U.S.C. § 1225(b). Otherwise, the noncitizen is ordered removed "without further hearing or review." 8 U.S.C. § 1225(b)(1)(B)(iii). Further, any noncitizen "subject to the procedures under [8 U.S.C. § 1225(b)] shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed." 8 U.S.C. § 1225(b)(1)(B)(iv).

33. Finally, § 1225(b)(2) mandates the detention of certain "applicants for admission" not covered by § 1225(b)(1). Yet in keeping with the statute's focus on arriving aliens, the statute does not mandate detention for all applicants for admission but only those who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2).

34. Since IIRIRA was first enacted, courts and the U.S. Government have consistently taken the position that noncitizens who have entered without inspection and are encountered in the United States years after their initial entry are entitled to removal proceedings under § 1229a and subject to detention under § 1226. *See, e.g., Jennings*, 583 U.S. at 303 ("While the language of §§ 1225(b)(1) and (b)(2) is quite clear, §1226(c) is even clearer. As noted, § 1226 applies to aliens *already present in the United States*.") (emphasis added); IIRIRA Implementing Regulation, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) ("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."); *see also Benitez v. Francis*, 2025 WL 2371588 (S.D.N.Y. Aug. 8, 2025)

(holding that a noncitizen who has been residing in the United States for more than two years cannot be classified as an "alien seeking admission"); *Martinez v. Hyde*, No. 25-cv-11613, 2025 WL 2084238, at *8 (D. Mass. July 24, 2025) (rejecting the Government's "novel interpretation" that 1225(b) applies to noncitizens detained while present in the United States).

35. Despite amending the Immigration and Nationality Act numerous times since passing IIRIRA, *see, e.g.*, REAL ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 302, Congress has never seen fit to clarify or alter this universally accepted interpretation of the statute.

36. Yet on July 8, 2025, the Government abruptly rejected the reading of 8 U.S.C. § 1226(a) it adopted when IIRIRA was first enacted and embraced for the next three decades. In a complete reversal, "DHS, in coordination with the Department of Justice (DOJ) . . . revisited its legal position on detention and release authorities," and issued guidance instructing all ICE employees that 8 U.S.C. § 1225 rather than § 1226 "is the applicable immigration detention authority for all applicants for admission." Ex. B, ICE Memo: Interim Guidance Regarding Detention Authority for Applicants for Admission.

37. On September 5, 2025, the Board adopted DHS's novel statutory reading of 8 U.S.C. § 1225(b)(2)(A) in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216. The Board found no distinction between the statutory terms "applicant for admission" and "seeking admission," and concluded that § 1225(b)(2) must be read to include all noncitizens who have not been inspected and admitted at any point.[1] *Id.* at 221-22. Further, the Board asserted that legislative

[1] Indeed, nearly 30 years of agency interpretation of the law would have provided Mr. Hernandez with an opportunity to seek review of DHS's custody determination in a hearing before an immigration judge under 8 U.S.C. § 1226(a). In fact, just weeks prior to *Matter of Hurtado*, the Attorney General designated for publication a decision recognizing that a noncitizen arrested in the interior of the United States and placed into removal proceedings under 8 U.S.C. § 1229a is detained under 8 U.S.C. § 1226(a) and eligible for release on bond. *See Matter of Akhmedov*, 29 I. & N. Dec. 166 (BIA 2025).

history supported its construction, although it did not cite any legislative history addressing the detention statutes. *Id.* at 223-25.

38. In fact, legislative history actually contradicts the Board's analysis. In February 1997, Congressman Lamar Smith, then Chair of the House Subcommittee on Immigration and Claims for the Committee on the Judiciary, wrote to the former Immigration and Naturalization Service (INS) in response to the INS's proposed rulemaking to implement the provisions of IIRIRA. *See* Ex. C, IIRIRA Legislative History. In his comment on the proposed regulation, he explained the legislative intent behind several provisions of IIRIRA that focused on "prompt apprehension, adjudication, and removal of aliens who are not lawfully present in the United States." *Id.* at 4. Specifically, he discussed expedited removal, the concept of arriving aliens, limitations on relief, changes to proceedings before an immigration judge, and limitations of appeals. *See generally id.*

39. Relevant here, Congressman Smith explained that the definition of "arriving alien" should be limited. He noted that the legislation used the term "arriving alien" "to distinguish aliens at the border of the United States from those who have made a substantial physical entry into the United States." *Id.* at 5-6. Congressman Smith thus recommended that the proposed regulations adopt a temporally limited measure as to who is considered "arriving," because "[c]riteria based on time are preferable . . . [and] would embrace both those who remain close to the border as well as those who escape shortly after having made an entry." *Id.* at 6. Congressman Smith continued, "[b]riefly put, if the alien is caught on the day he or she arrives, the alien is an 'arriving' alien, but not otherwise. This is a common sense approach that should be easy for INS officials to understand and implement." *Id.*

40. Indeed, courts that have reviewed this issue have almost universally agreed with this "common sense approach" and overwhelmingly rejected Respondents' new reading of the statute. *Maldonado Merlos v. Noem*, No. 1:25-cv-1645 (E.D. Va. Oct. 9, 2025); *Singh v. Noem*, No. 1:25-cv-1525 (E.D. Va. Oct. 7, 2025); *Ortiz Ventura v. Noem*, No. 1:25-cv-01429-MSN-WBP (E.D. Va. Oct. 2, 2025); *Quispe-Ardiles v. Noem*, No. 1:25-cv-01382-MSN-WEF (E.D. Va. Sept. 30, 2025); *Hasan v. Crawford*, 1:25-cv-01408-LMB-IDD, 2025 WL 2682255 (E.D. Va. Sept. 19, 2025). *See also Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025);; *Alvarez-Martinez v. Noem*, No. 5:25-CV-01007-JKP, 2025 WL 2598379 at *4 (W.D. Tex., Sept. 8, 2025); *Benitez v. Francis*, -- F. Supp. 3d --, 2025 WL 2371588 (S.D.N.Y. Aug. 8, 2025) (holding that a noncitizens who has been residing in the United States for more than two years cannot be classified as an "alien seeking admission"); *Martinez v. Hyde*, No. 25-cv-11613, 2025 WL 2084238 (D. Mass. July 24, 2025).

41. The new Board precedent deprives Mr. Hernandez of any process by subjecting him, a man who has resided for decades in the United States with no criminal history to speak of, to the same mandatory detention regime reserved for applicants at the border seeking initial entry into the United States.

CLAIMS FOR RELIEF

COUNT ONE
Violation of Substantive Due Process

42. Mr. Hernandez realleges and incorporates by reference the paragraphs above.

43. As a person living within the United States for many years, Mr. Hernandez is entitled to due process of law. U.S. Const. amend. V; *see generally Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

44. 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*, 533 U.S. at 690.

45. The "Fifth and Fourteenth Amendments' guarantee of 'due process of law' [] include[s] a substantive component, which forbids the government to infringe certain 'fundamental' liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest." *Reno v. Flores*, 507 U.S. 292, 301-02 (1993) (emphasis in original). Substantive due process "prevents the government from engaging in conduct that shocks the conscience, or interferes with rights implicit in the concept of ordered liberty." *United States v. Salerno*, 481 U.S. 739, 746 (1987).

46. The substantive due process right to be free from arbitrary detention extends to noncitizens detained during removal proceedings, and indeed even those who have already been ordered removed from the United States on account of past criminal violations. *Zadvydas*, 533 U.S. at 690 (permitting detention in non-punitive circumstances only where "special justification . . . outweighs the individual's constitutionally protected interest in avoiding physical restraint.").

47. Indeed, the liberty interest in freedom from detention "is the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 FU.S. 507, 529 (2004).

48. Mr. Hernandez has a fundamental interest in liberty and being free from official restraint. His detention without a bond hearing before a neutral arbiter to determine whether that continued detention is necessary to ameliorate any flight risk or protect the community violates his substantive due process rights.

COUNT TWO
Violation of Immigration and Nationality Act

49. Mr. Hernandez realleges and incorporates by reference the paragraphs above.

50. Mr. Hernandez is not subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). He is properly subject to detention under § 1226(a) and entitled to a bond hearing by statute and regulation as countless district court decisions have affirmed. *See supra* ¶ 38.

51. The plain language of the INA is clear: § 1225(b)(2) "authorizes the Government to detain aliens *seeking admission into the country*," and § 1226(a) "authorizes the Government to detain certain aliens *already in the country* pending the outcome of removal proceedings." *Jennings*, 583 U.S. at 289; *accord Sampiao v. Hyde*, No. 1:25-cv-11981, 2025 WL 2607924, at *8 (D. Mass. Sept. 9, 2025); *Gomes v. Hyde*, No. 1:25-cv-11571, 2025 WL 1869299, at *5 (D. Mass. July 7, 2025).

52. As the Supreme Court recognized in *Jennings*, § 1225(b) focuses on individuals arriving at the border and ports of entry and thus are in the process of "seeking admission." *Jennings*, 583 U.S. at 297, 303; *see also* 8 C.F.R. § 1.2 (addressing noncitizens who are geographically "coming or attempting to come into the United States."). Conversely, § 1226(a) focuses on individuals who are already in the United States and who the Government is seeking to remove through removal proceedings. *Id.* at 303. The INA further clarifies that the term "application for admission" has "reference to the application for admission into the United States," making clear that the term applies to those applying to enter into the United States physically. 8 U.S.C. § 1101(a)(4). Mr. Hernandez cannot reasonably be described as "seeking admission" to a country he has lived in for the past twenty-four years.

53. Conversely, to apply the statute to "all applicants for admission" regardless of whether they are "seeking admission" (as EOIR has concluded in *Matter of Hurtado*) would render the

phrase "seeking admission" redundant. *See Martinez*, 2025 WL 2084238, at *2. And to "treat[] the terms 'applicant for admission' and 'alien seeking admission' as synonymous [would] violate[] the principle that Congress is presumed to have acted intentionally in choosing different words in a statute, such that different words and phrases should be accorded different meanings." *Benitez*, 2025 WL 2371588, at *6.

54. Additionally, applying § 1225(b)(2) to all noncitizens except those who have been admitted could not have been Congress's intent because it would render other mandatory detention provisions, such as § 1226(c)(1), redundant. *Sampiao*, 2025 WL 2607924, at *8; *Rodriguez*, 779 F. Supp. 3d at 1259; *Gomes*, 2025 WL 1869299, at *7. Section 1226(c)(1) requires mandatory detention for individuals who are present in the United States without being admitted or paroled *and* who have committed certain criminal offenses. *Sampiao*, 2025 WL 2607924, at *8. Yet if all noncitizens who are inadmissible are subject to mandatory detention under § 1225(b)(2), as Respondents contend, there would be no need for Congress to identify subcategories of inadmissible noncitizens who are subject to mandatory detention under § 1226(c), rendering the provision completely redundant. *Sampiao*, 2025 WL 2607924, at *8 (citing the *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 386 (2013) ("The canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme.").

55. Thus, this Court must find that subjecting Mr. Hernandez to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and denying him the bond hearing he is entitled to under § 1226(a) violates the INA.

COUNT THREE
Violation of Procedural Due Process

56. Mr. Hernandez realleges and incorporates by reference the paragraphs above.

57. "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). While the Supreme Court has been clear that for noncitizens "on the threshold of initial entry . . . [w]hatever the procedure authorized by Congress is, it is due process." *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953), this maxim does not apply to Mr. Hernandez.

58. After more than two decades in this country, Mr. Hernandez is not on the threshold of initial entry. Indeed, it is well established that noncitizens who "once passed through our gates, even illegally" are entitled to greater constitutional protections. *Id.*; *see also Zadvydas*, 553 U.S. at 693 ("It is well established that certain constitutional protections available to persons inside the United States are unavailable to [noncitizens] outside of our geographic borders."). Thus, even if the Court were to agree that Mr. Hernandez is properly detained under § 1225(b)(2)—which he is not—his mandatory detention does not comply with due process.

59. As an individual who has "passed through our gates," Mr. Hernandez is entitled to greater constitutional protections than those at the threshold of initial entry for whom due process is defined by the procedures set by Congress. *Miranda*, 34 F.4th at 346-47 (recognizing due process rights for those who have entered without inspection).

60. A procedural due process challenge is governed by a three-factor balancing test weighing: (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, or additional or substitute procedural safeguards"; and (3) "the Government's interest" *United States v. White*, 927 F.3d 257, 264 (4th Cir. 2019) (citing *Mathews*, 424 U.S. at 335).

61. Each of these factors weigh in Mr. Hernandez's favor and support a finding that he may not be detained without an opportunity to seek release on bond before an immigration judge.

62. Mr. Hernandez has a strong private interest in remaining free from detention. Indeed, the Supreme Court has affirmed that even for noncitizens, "[f]reedom 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. And the Supreme Court, recognizing the strong private interest in remaining free from detention, has held "that detention violates that Clause unless the detention is ordered in a criminal proceeding with adequate procedural protections, or, in certain special and narrow non-punitive circumstances where a special justification, such as harm-threatening mental illness, outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Id.* (cleaned up).

63. While the Government has an interest in ensuring Mr. Hernandez's appearance at his removal proceedings and protecting the community, *see id.*, the bond procedures established under § 1226(a) adequately serve both interests by allowing an immigration judge to make an individualized assessment of a noncitizen's flight risk and the danger he may pose to the community. And the Government cannot plausibly justify denying a bond hearing based on "administrative burdens" when it has, for the past three decades, consistently provided bond hearings to noncitizens like Mr. Hernandez who have established a presence in the United States after previously entering without inspection.

64. Finally, this case demonstrates the high risk of erroneous deprivation that would result from allowing DHS to detain noncitizens like Mr. Hernandez without any opportunity to challenge their detention before the administrative agency. Without a bond hearing, there is a high probability that Mr. Hernandez will be detained even though his continued detention serves no non-punitive purpose as it is unnecessary to protect the community or to ensure his appearance at removal proceedings.

65. In short, denying Mr. Hernandez any opportunity to demonstrate that his continued detention is unnecessary to protect the community or ensure his appearance at proceedings violates his procedural due process rights.

PRAYER FOR RELIEF

Based on the foregoing, Mr. Hernandez requests that this Court:

(1) Assume jurisdiction over this matter;

(2) Issue an order requiring Respondents to show cause why this Petition should not be granted within three days;

(3) Declare that 8 U.S.C. § 1226(a) governs Mr. Hernandez's detention by U.S. immigration authorities;

(4) Order that Mr. Hernandez be released from immigration custody or, alternatively, afforded a bond hearing as authorized under 8 U.S.C. § 1226(a) at which 8 U.S.C. § 1225(b)(2)(A) cannot be applied, DHS bears the burden of proof, and the immigration judge considers his ability to pay bond as part of the factors in setting bond; and

(5) Grant any other and further relief this Court deems just and proper.

Dated: October 10, 2025

Respectfully submitted,

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CERTIFICATE OF REPRESENTATION

Undersigned counsel certify that they represent Petitioner in this action and submit this pleading on his behalf. 28 U.S.C. § 2242.

Dated: October 10, 2025

Respectfully submitted,

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