IN UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MIGUEL ALEJANDRO BERNAL AYON Petitioner, vs. SAMUEL OLSON, Field Office Director, Chicago Filed Office, Immigration and Customs Enforcement KRISTI NOEM, Secretary of the United States Department of Homeland Security, and PAMELA BONDI, U.S. Attorney General, Respondents.	)	Case No.

PETITION FOR *HABEAS CORPUS*

Petitioner, **MIGUEL ALEJANDRO BERNAL AYON**, by and through counsel, **CARLA I. ESPINOZA**, hereby petitions this Honorable Court for a Writ of *Habeas Corpus* against the Respondents, and in support thereof, states as follows:

PARTIES

1. The Petitioner, **MIGUEL ALEJANDRO BERNAL AYON**, a native and citizen of Mexico, is currently being detained by Respondents, Kristi Noem, Secretary of the Department of Homeland Security ("DHS"), Samuel Olson, the Chicago Field Office Director for the United States Immigration and Customs Enforcement ("ICE") of the DHS, and Pamela Bondi, U.S. Attorney General. Petitioner was detained by Respondents on the morning of November 4, 2025, in Elgin, Illinois and, based on telephonic contact with his family, he is currently being held at the ICE Facility in Broadview, Illinois. However, ICE has not officially processed Petitioner into their system. *See* ICE Locator Search Results, attached hereto as

Exhibit "A."[1] The Broadview Facility falls under the charge of the ICE Chicago Field Office.

2. The Respondent, SAMUEL OLSON, is the ICE Chicago Field Office Director and, thus, Respondent Olson is Petitioner's immediate custodian.

3. The Respondent, KRISTI NOEM, is the DHS Secretary and the Petitioner is held under her authority.

4. The Respondent, PAMELA BONDI, is the U.S. Attorney General and Petitioner will suffer prolonged detention under her authority.

JURISDICTION & VENUE

5. This Court has jurisdiction to consider this petition pursuant to Article I, Section 9, clause 2 of the United States Constitution ("Suspension clause"), and 28 U.S.C. §§2241, 1331, and 1361, since Mr. Bernal Ayon is presently in the custody under the color of the authority of the United States, and such custody is in violation of the Constitution, laws and/or treaties of the United States. This Court may grant relief pursuant to Habeas Corpus, 28 U.S.C. §2241, *et. seq.*, the Declaratory Judgment Act, 28 U.S.C. §2201, *et seq.*, and the All Writs Act, 28 U.S.C. §1651.

6. Venue lies in the United States District Court for the Northern District of Illinois, the judicial district in which the Petitioner's custodian is located as of the moment of filing the instant petition. 28 U.S.C. §1391(e). Moreover, pursuant to the All Writs Act, 28 U.S.C. § 1651, this court has the authority to enter any orders necessary to preserve its jurisdiction including ordering for Petitioner not to be removed from the jurisdiction of the United States and not to be transferred to any federal judicial district outside of the States of Illinois, Indiana or Wisconsin.

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[1]These results were obtained by entering Petitioner's immigration case number A [redacted]

See A.A.R.P. v. Trump, 145 S. Ct. 1364, 1369 (2025) (citing 28 U.S.C. § 1651(a)) ("[T]he Government represented on the record in federal court that it reserved the right to remove detainees after midnight. We had the power to issue injunctive relief to prevent irreparable harm to the applicants and to preserve our jurisdiction over the matter."); *United States v. United Mine Workers of Am.*, 330 U.S. 258, 293 (1947) ("The District Court had the power to preserve existing conditions while it was determining its own authority to grant injunctive relief.").

7. Petitioner's action is based upon traditional district court authority to entertain *habeas corpus* actions pursuant to 28 U.S.C. §2241, et. seq., and §§1331, 1361. Petitioner's action does not fall within the proscriptions of jurisdiction under 8 U.S.C. §1252, because the Petitioner does not challenge an "order of removal", *see,* 8 U.S.C. §1252(a)(5). The Petitioner challenges his unlawful detention during the pendency of removal proceedings. Accordingly, jurisdiction is proper in this Court, not the circuit court of appeals.

8. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith," unless it is abundantly clear the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Respondents must file a return "*within three days* unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*(emphasis added).

CASE AND PROCEDURAL HISTORY

9. On November 4, 2025, Petitioner was detained by Respondents in Elgin, Illinois while he was working between the intersections of North Du Bois Avenue and Chicago Street.

10. Upon information and belief, Petitioner was not arrested pursuant to a properly issued Administrative Warrant.[2]

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[2]In *Nava v. Dep't of Homeland Sec.*, No. 18-CV-3757, 2025 WL 2842146, at *1 (N.D. Ill. Oct. 7, 2025), the court held that the regulations implementing DHS's arrest authority under 8

11. Petitioner entered the United States without inspection in 2000 and has resided here ever since. He is married to a United States citizen who has filed a Petition for Alien Relative (I-130) on his behalf, which has been approved. He is also the father of two United States citizen children ages 15 and 17.

12. A non-citizen who entered the United States without inspection and has resided here for decades is entitled to seek release on bond from an immigration judge under Section 236(a) of the INA, 8 U.S.C. § 1226(a), which calls for a discretionary frame-work to bond determinations.

13. However, DHS-ICE has taken the position that noncitizens such as Mr. Bernal Ayon who are present in the United States without inspection and generally eligible to seek release on bond under Section 1226(a) are now covered by Section 1225(b)(2)(A) and, thus, subject to mandatory detention. DHS-ICE adopted this new policy by issuing an internal memorandum on July 8, 2025.[3] On September 5, 2025, the Board of Immigration Appeals ("BIA") under the authority of the U.S. Attorney General published *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), which erroneously holds that immigration judges lack authority to hear bond requests or to grant bond to non-citizens who are present in the United States

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U.S.C. § 1226 require DHS to issue a Notice to Appear either before or concurrently with the Form I-200 warrant when making a warrant-based arrest. 8 C.F.R. §§236.1(b) and 1236.1(b). Absent the NTA, the administrative warrant is an invalid basis for arrest, rendering the arrest warrantless. In the context of an order to enforce the *Castanon Nava* Settlement Agreement, the court recently found that DHS had engaged in warrantless arrests in violation of the same.

[3]The DHS-ICE Policy Memorandum can be found at https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission (last visited Oct. 16, 2025).

without admission pursuant to Section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A).[4] The overwhelming majority of district courts which have considered this new policy and the Matter of *Yajure Hurtado* holding and rejected finding that Respondents interpretation of the statute: (1) disregards the plain meaning of § 1225(b)(2)(A); (2) disregards the relationship between §§ 1225 and 1226; (3) would render a recent amendment to § 1226(c) superfluous; and (4) is inconsistent with decades of prior statutory interpretation and practice.

14. On October 16, 2025, a court in this Northern District of Illinois issued a decision in *Ochoa Ochoa v. Noem et al*, 25 C 10865 (Judge Jenkins). *See* Dkt. 8-2. In *Ochoa Ochoa*, the court "conclude[d] that it ha[d] jurisdiction over Ochoa Ochoa's habeas claim as to the lawfulness of his current detention" and [i]t grant[ed] the petition on the merits of Ochoa Ochoa's claims under Counts One and Three insofar as that he seeks (1) a declaration that he is not subject to mandatory detention under § 1225(b)(2) and is instead detained pursuant to § 1226(a); and (2) an order requiring that he be provided a § 1226(a) bond hearing." *Ochoa Ochoa*, at *4. The court further held that "Petitioner's detention without an individualized custody determination violates the INA and the Due Process Clause of the Fifth Amendment."

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[4]The overwhelming majority of district court to have considered the novel policy and the holding in *Matter of Yajure Hurtado* have rejected it. *See* Pizarro Reyes, 2025 WL 2609425, at *7-9 (holding that the text, legislative history and agency guidance support the argument that Section 1226, not Section 1225 applies); *Lopez-Campos*, 2025 WL 2496379 ("the Court finds that Lopez-Campos is not subject to the provisions of Section 1225(b)(2)(A). *Rodriguez*, 779 F. Supp.3d at 1261 ("[Petitioner] has shown that the text of Section 1226, canons of interpretation, legislative history, and longstanding agency practice indicate that he is governed under Section 1226(a)'s "default" rule for discretionary detention."); *Rosado v. Figueroa*, 2025 WL 2337099, at *8 (D. Ariz. Aug. 11, 2025) ("Adoption of Respondents' position would render significant portions of 8 U.S.C. § 1226 meaningless."). A spreadsheet detailing the over 90 district court cases which support Petitioner's decision can be found at https://ailassoc.sharepoint.com/:x:/s/legalteam/ETbJeNF7whFKjedlZi4f-L0BLqBvPhDAf5Fan6xh3q9ItA?rtime=2XHmhFkT3kg (last visited Oct. 31, 2025).

Id. at *18.

15. The Petitioner is not required to further "exhaust administrative remedies" because doing so would be futile in light of *Matter of Yajure Hurtado* and would be prejudicial for the Petitioner to continue to suffer unlawful detention. *See Gonzales v. O'Connell*, 355 F.3d 1010 (7th Cir. 2004).

HABEAS CORPUS

16. The Writ of *habeas corpus* is guaranteed by the Constitution and cannot be suspended except where "in Cases of Rebellion or Invasion the Public Safety may require it." Suspension Clause, Article I, Section 9 of the United States Constitution.

17. The Petitioner is entitled, under the Suspension clause, the Due Process clause of the 5th Amendment, and the Separation of Powers principle embodied in Article III of the Constitution, to *habeas corpus* review of an executive action which deprives the Petitioner of any substantive statutory or constitutionally protected right and/or his liberty.

18. The Petitioner's remedy for release is by way of this petition for Writ of *habeas corpus*. The Habeas Corpus Act, 28 U.S.C. §2241, et seq. provides that a court entering the Writ shall grant same, or order the respondent to show cause why the Petitioner should not be released, unless it is abundantly clear that the Writ shall not issue.

Due Process Clause of the 5th Amendment

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

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

20. *Private Interest*. As to the first *Mathews* factor, "[t]he interest in being free from physical detention" is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529, 531 (2004). Petitioner has been detained in conditions that are indistinguishable from criminal incarceration. This detention prevents him from seeing and providing support to his family, from going to work to support himself, and deprives him of any privacy and freedom of movement.

21. As to the second *Mathews* factor, courts must "assess whether the challenged procedure creates a risk of erroneous deprivation of individuals' private rights and the degree to which alternative procedures could ameliorate these risks." *Gunaydin v. Trump*, No. 25-CV-01151 (JMB/DLM), 2025 WL 1459154, at *8 (D. Minn. May 21, 2025). The government's current procedure, unlawfully subjecting Petitioner to mandatory detention under Section 1225(b)(2), creates a substantial risk of erroneous deprivation of Petitioner's interest in being free from arbitrary confinement. The alternative procedure of a bond under Section 1226(a) can ameliorate this risk.

22. *Government Interest*. As to the third *Mathews* factor, the government's interest in maintaining the current procedure is minimal here. The new interpretation of Section 1225(b)(2)

– that people like Petitioner who have resided in the United States for decades are now subject to mandatory detention – flies in the face of the statutory text, statutory framework, Congressional intent, almost three decades of prior practice, and the decisions of federal courts across the nation. Any government interest in public safety or ensuring that Petitioner attends future immigration proceedings would be satisfied through proper application of Section 1226(a), which requires a bond redetermination hearing where an immigration judge will consider Petitioner's individualized facts and circumstances to determine whether he is a danger to the community or a flight risk.

Count II
Violation of the INA

23. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs. ICE-DHS currently detains the Petitioner unlawfully insofar as the Petitioner is being deprived of an opportunity to seek release on bond pursuant to 8 U.S.C. §1226(a), INA §236(a).

Count II
Violation of Due Process

24. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs. 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, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001).

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

restraint. Respondents now erroneously detain Petitioner under the mandatory provision in § 1225(b)(2), rather than the discretionary provision of Section 1226(a) which provides for release on bond or conditional parole.

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

A. Grant the writ of *habeas corpus* upon the Respondents directing them to release the Petitioner forthwith;

B. Alternatively, issue an order for Respondent to be considered for bond under the framework 8 U.S.C. §1226(a) within 5 days of this Court's decision;

C. Grant attorney's fees and costs; and

D. for any other further relief this Court deems just and reasonable.

Dated: Chicago, Illinois
November 5, 2025

/s/Carla I. Espinoza
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CERTIFICATE OF SERVICE

I hereby certify that on November 5, 2025, I electronically filed the foregoing document with the Clerk of the Court for the United States District Court for the Northern District of Illinois by using the CM/ECF system. All parties to this case are registered CM/ECF users and will be served through the CM/ECF system

Dated: November 5, 2025
Chicago, Illinois

Respectfully submitted,

/s/ Carla I. Espinoza
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