UNITED STATES DISTRICT COURT
NORTHERN ILLINOIS DISTRICT
EASTERN DIVISION

HESIQUIO PEREZ ALVARADO, Petitioner, v. SAMUEL OLSON, Field Office Director, Chicago Field Office, Immigration and Customs Enforcement, in his official capacity; KRISTI NOEM, Secretary, U.S. Department of Homeland Security, in her official capacity; PAMELA BONDI, U.S. Attorney General, in her official capacity; TODD M. LYONS, Acting Director of U.S. Immigration and Customs Enforcement, in his official capacity; RODNEY S. SCOTT, Commissioner, U.S. Customs and Border Protection, in his official capacity. Respondents.	Case No. 25 CV 13650 **PETITION FOR A WRIT OF HABEAS CORPUS AND EMERGENCY STAY**

INTRODUCTION

1. Petitioner, HESIQUIO PEREZ ALVARADO, is in the physical custody of Respondents at the BROADVIEW SERVICE STAGING CENTER (BSSC) in BROADVIEW, ILLINOIS. He now faces arguable unlawful detention and imminent transfer hundreds, if not nearly 1500 miles away from Illinois, so he seeks an emergency stay and release. The Department of Homeland Security (DHS) and the Executive Office for Immigration Review (EOIR) of the Department of Justice (DOJ) have concluded it had reasonable suspicion to detain during a warrantless search, but more importantly that Petitioner is subject to mandatory detention under U.S.C. § 1225(b)(2).

2. Respondent hereby withdraws any consent to removal because it was not knowingly and voluntarily given due to an illegal arrest, unlawful detention and the duress caused by Respondents decision to engage in a warrantless search in violation of the Castanon Nava settlement order 18-cv-3757-RRP and past decisions including the permanent injunction issued in Illinois Migrants Council v. Pilliod, 531 F. Supp. 1011, 1022-24 (N.E. Ill Dist. 1982) based upon information and belief.

3. Petitioner has lived in the United States for 29 years. He is the father of three U.S. citizen children, one of whom is a 9-year-old special needs child with generalized epilepsy and microcephaly due to Chromosome 14 Syndrome with Hydrocephalus. These conditions are genetic and also include other symptoms including developmental delays, intellectual disabilities, and distinctive facial features.

4. Respondents engaged in a warrantless search of a private condominium complex in violation of the abovementioned settlement order, Federal law, and the Illinois Migrant Council v. Pilliod based upon information and belief.

5. On Wednesday, November 5, 2025, Petitioner was arrested by DHS, when U.S. Customs and Border Patrol Agents (CBP) Agents drove up, stopped as they observed the Petitioner, among others, on condominium complex property.

6. Petitioner, among others, were engaged in landscaping work on the property with the consent of the condominium owner at the complex known as [redacted] located at [redacted] Without provocation, engagement, or reasonable suspicion, Respondent's agents entered onto the property without the express consent of the owner.

7. The Petitioner had no outstanding order of removal nor summary exclusion order based upon information and belief at the time of his arrest.

8. The Petitioner, among others, were lawfully on private property.

9. CBP Agents could not be considered to be in hot pursuit of any known ongoing crime.

10. Once Agents entered the property, they detained three individuals, one of which is the Petitioner.

11. Once detained and arrested, DHS eventually issued an arrest warrant based upon information and belief pursuant to 8 USC 1226a; if a Notice of Custody Determination was issued based upon information and belief.

12. Petitioner has a significant number of family members who live in the U.S. including his three children, his father, and five siblings. He is employed and has significant community connections. Petitioner volunteers to help with security at the Shrine of Our Lady of

Guadalupe Catholic Church in Des Plaines, Illinois. He has no criminal history based upon information and belief.

13. The Petitioner has been issued documents related to an immigration case that have yet to be filed with the Executive Office of Immigration Review.

14. Attorney is unlawfully barred by ICE from meeting with Petitioner at the BSSC in violation of his constitutional and legal right to counsel.

15. Assuming argument, and the arrest and detention is deemed valid, if he is charged with, *inter alia*, having entered the United States without inspection. 8 U.S.C. § 1182(a)(6)(A)(i). He will be represented by counsel in his removal proceedings. Petitioner would likely be found eligible and can file for non-LPR cancellation of removal.

16. On July 8, 2025, DHS issued a new policy instructing all Immigration and Customs Enforcement (ICE) employees to consider anyone inadmissible under Section 1182(a)(6)(A)(i)—i.e., those who entered the United States without inspection—to be an "applicant for admission" under Section 1225(b)(2)(A) and therefore subject to mandatory detention. Consistent with this policy, DHS has denied Petitioner release from immigration custody.

17. Petitioner's detention on this basis violates the plain language of the Immigration and Nationality Act (INA). 8 USC 1225(b)(2) does not apply to individuals like Petitioner, who entered the United States 29 years ago and who was apprehended hundreds of miles from any border or port of entry. Instead, such individuals are subject to discretionary detention under 8 USC 1226(a), which allows for release on conditional parole or bond. That statute expressly applies to people who, like Petitioner, are charged as inadmissible for having entered the United States without inspection.

18. Respondents' new legal interpretation is plainly contrary to the statutory text, statutory framework, Congressional intent, decades of agency practice, and decisions of federal courts across the nation, which apply 8 USC 1226(a) to people like Petitioner. Further, Respondent's detention of Petitioner without a bond redetermination hearing to determine whether he is a flight risk or danger to others violates his right to due process.

19. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be released, or in the alternative, that he be provided a prompt bond hearing under Section 1226(a) in the Executive Office of Immigration Review in Chicago, Illinois.

JURISDICTION

20. Petitioner is in the physical custody of Respondents. Petitioner is detained at BSSC, which has been found to be an overcrowded DHS holding facility in Broadview, Illinois based upon information and belief.

21. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

22. 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

23. 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 Northern Illinois District Court, the judicial district in which Petitioner currently is detained.

24. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a

substantial part of the events or omissions giving rise to the claims occurred in the Northern Illinois District Court.

REQUIREMENTS OF 28 U.S.C. § 2243

25. The Court must grant the petition for writ of habeas corpus or order Respondents 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, the Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

26. 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

27. Petitioner HESIQUIO PEREZ ALVARADO is a citizen of MEXICO who has resided in the United States since approximately July 29, 1996. He has been in immigration detention since November 5, 2025.

28. Respondent SAMUEL OLSON is the ICE Field Office Director for the Chicago Field Office which includes Illinois. As such, SAMUEL OLSON is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity.

29. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the Immigration and

Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

30. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. She is sued in her official capacity.

31. Respondent Todd Lyons is the Acting Director of ICE. As the head of ICE, he is responsible for decisions related to the detention and removal of certain noncitizens, including Petitioner. As such, he is also a legal custodian of Petitioner. He is sued in his official capacity.

FACTUAL BACKGROUND

32. Petitioner is a 48-year-old national of Mexico. He entered the United States without inspection on July 29, 2025 and has lived here ever since. He lived in Glendale Heights, Illinois prior to his detention.

33. Petitioner has lived in the United States for over 29 years. He is the father of three children, two of whom are U.S. citizens. His nine year old special needs son J[redacted] has generalized epilepsy and microcephaly due to Chromosome 14 Syndrome with Hydrocephalus. These conditions are genetic, but also include other symptoms including developmental delays, intellectual disabilities, and distinctive facial features.

34. His son, C[redacted], is fifteen years old and a freshman in high school at [redacted] in Lombard, Illinois.

35. The Petitioner's father is a lawful permanent resident, but also has four siblings who live in the United States.

36. Petitioner is employed as landscaper. He also volunteers to help with security at The Shrine of Our Lady of Guadalupe Catholic Church in Des Plaines, Illinois. He has no criminal background history based upon information and belief.

37. On November 5, 2025, Petitioner was detained by DHS while working as a labor for a landscaping company on the grounds of a condominium complex in Elk Grove Village, Illinois. There was no attempt to demand a review of any form I-9 applications from his employer, survey the employees, nor seek documents from the employer prior to the arrest. The untimely arrest warrant issued by DHS states that he was detained pursuant to 8 U.S.C. § 1226(a) based upon information and belief.

38. Petitioner is now detained at the BSSC in Broadview, Illinois, which is a staging area for transfer or release on bond in Broadview, Illinois. Petitioner was also issued a Notice of Custody Determination, based upon information and belief which further indicates he was detained pursuant to Section 1226(a).

37. After arresting him, DHS prepared and issued Petitioner a notice to appear charging document but has yet to place Petitioner in removal proceedings inside or outside of this jurisdiction pursuant to 8 U.S.C. § 1229a by filing a Notice to Appear based upon information and belief. Filing the notice to appear outside of Illinois will greatly prejudice Petitioner in that he will have to continue with his Immigration case, while detained hundreds of miles away from witnesses and his attorney who can more effectively act on his behalf if he was allowed to proceed before the EOIR in Chicago. ICE charged Petitioner with, *inter alia*, being inadmissible under U.S.C. § 1182(a)(6)(A)(i) as someone who entered the United States without inspection based upon information and belief.

38. Petitioner is represented by counsel before I.C.E. Petitioner will be represented by counsel in immigration court in removal proceedings. He is eligible and will apply for non-LPR cancellation because he meets the requirements for relief. He has yet to be scheduled for immigration court. Petitioner has every reason to appear at his immigration court hearings due to the extreme and exceptional condition of his U.S. citizen son who has Chromosome 14 Syndrome with Hydrocephalus.

39. Pursuant to Respondents' new policy, discussed *infra*, Petitioner remains in mandatory detention. Absent relief from this Court, he faces the prospect of months, or even years, in immigration custody, separated from his family and community without ever receiving an individualized hearing justifying his detention in violation of the INA and Due Process.

EXHAUSTION OF REMEDIES

40. No statutory requirement of administrative exhaustion applies to Petitioner's case. Moreover, the judicially created "general rule that parties exhaust prescribed administrative remedies before seeking relief from the federal courts" does not apply to Petitioner's present challenge, as there are no prescribed administrative remedies to which he could resort. *McCarthy v. Madigan*, 503 U.S. 140, 144–45 (1992), *superseded by statute on other grounds as recognized in Woodford v. Ngo*, 548 U.S. 81 (2006).

41. In particular, DHS has taken the position that a noncitizen like Petitioner, who entered without inspection, is subject to mandatory detention under 8 U.S.C. § 1225, and the Executive Office for Immigration Review has affirmed that view. In a published decision, the Board of Immigration Appeals recently held that "Immigration Judges lack authority to hear bond requests or to grant bond to [noncitizens] who are present in the United States without

admission." *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Under the BIA's interpretation, Petitioner is ineligible for bond as a noncitizen who entered the United States without inspection. Accordingly, there are no administrative remedies that he could exhaust before seeking habeas relief. *See Singh v. Lewis*, No. 4:25-CV-96-RGJ, 2025 WL 2699219, at *3 (W.D. Ky. Sept. 22, 2025) ("[t]he United States has made clear their position on Section 1225, and it is being applied at all levels within the DHS. Therefore, it is unlikely that any administrative review would lead to the United States changing its position and precluding judicial review"); *Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, 2025 WL 2496379, at *4 (E.D. Mich. Aug. 29, 2025) ("Because exhaustion would be futile and unable to provide Lopez-Campos with the relief he requests in a timely manner, the Court waives administrative exhaustion and will address the merits of the habeas petition.").

42. Further, neither an immigration judge nor the Board of Immigration Appeals can rule on a petitioner's constitutional claims. *See Matter of R-A-V-P-*, 27 I. & N. Dec. 803, 804 n.2 (B.I.A. 2020) (holding that IJs and the BIA lack any authority to consider the constitutionality of the statutes or regulations governing immigration detention that they administer and are bound to follow); *Matter of C--*, 20 I. & N. Dec. 529, 532 (B.I.A. 1992) ("[I]t is settled that the immigration judge and this Board lack jurisdiction to rule upon the constitutionality of the Act and the regulations."); s*ee also Gonzalez v. O'Connell*, 355 F.3d 1010, 1017 (7th Cir. 2004) (noting that "the BIA has no jurisdiction to adjudicate constitutional issues").

LEGAL FRAMEWORK

I. Detention Authority and Respondent's Efforts to Expand Mandatory Detention

43. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.

44. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens "already in the country." *See Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018). Section 1226(a) "sets out the default rule: The Attorney General may issue a warrant for the arrest and detention of a[] [noncitizen] 'pending a decision on whether the [noncitizen] is to be removed from the United States." *Id.* at 288 (quoting § 1226(a)). Individuals in Section 1226(a) detention are generally entitled to a bond hearing at the outset of their detention. *See* § 1226(a)(2); 8 C.F.R. §§ 1003.19(a), 1236.1(c)(8), (d)(1); *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239, 1247 (W.D. Wash. 2025) ("those detained under Section 1226(a) are entitled to a bond hearing before an [immigration judge] at any time before entry of a final removal order.").

45. Section 1226(c) "carves out a statutory category" of noncitizens from Section 1226(a) for whom detention is mandatory, comprised of individuals who have committed certain "enumerated … criminal offenses [or] terrorist activities." *Jennings*, 583 U.S. at 289 (citing § 1226(c)(1)). Among the individuals carved out and subject to mandatory detention are certain categories of "inadmissible" noncitizens. § 1226(c)(1)(A), (D), (E). Reference to such inadmissible noncitizens makes clear that, by default, people who are applicants for admission but encountered in the interior are afforded a bond hearing under subsection 1226(a). Courts have recently confirmed this understanding of Section 1226. *See Rodriguez Vazquez*, 779 F. Supp. 3d at 1257 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)) ("When Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies."); *see also, e.g.*, *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *6 (D. Mass. July 7, 2025) ("inadmissibility on one of the three grounds specified in Section 1226(c)(1)(E)(i) is not by itself sufficient to except [a noncitizen] from Section 1226(a)'s discretionary detention framework").

46. Second, the INA provides for mandatory detention of certain categories of noncitizens "seeking entry into the United States" under 8 U.S.C. § 1225(b). *Jennings*, 583 U.S. at 297; *see* § 1225(b) ("Inspection of applicants for admission").

47. In *Jennings*, the Supreme Court explained that this mandatory scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] *seeking to enter* the country is inadmissible." *Jennings*, 583 U.S. at 287 (emphasis added). Noncitizens subject to mandatory detention under Section 1225 may not be released except "for urgent humanitarian reasons or significant public benefit" under the parole authority provided by 8 U.S.C. § 1182(d)(5)(A). *See id.* at 300.

48. Section 1225 is split into two categories. Section 1225(b)(1) provides for mandatory detention of noncitizens charged with enumerated grounds of inadmissibility *and* placed in expedited removal proceedings. 8 U.S.C. § 1225(b)(1)(A)(i). Meanwhile, Section 1225(b)(2) applies only to recently arrived noncitizens seeking entry at a border or port of entry. *See infra* ¶ 44-58.

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

50. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).

51. Respondents have recently taken various steps seeking to expand their use of mandatory detention under Section 1225(b)(2) beyond its plain language.

52. On July 8, 2025, ICE, "in coordination with" DOJ, announced a new policy that rejected well-established understanding of the statutory framework and reversed decades of practice. *See* U.S. Immigration and Customs Enforcement, Interim Guidance Regarding

Detention Authority for Applicants for Admission (July 8, 2025), https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission.

53. The new policy claims that *all persons who entered the United States without inspection* shall now be deemed "applicants for admission" under 8 U.S.C. § 1225 and therefore are subject to mandatory detention under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended and affects those who have resided in the United States for months, years, and even decades.

54. On September 5, 2025, the Board of Immigration Appeals (BIA) issued a published decision adopting this same position. *See* ***Matter of Yajure Hurtado***, 29 I&N Dec. 216 (BIA 2025). That decision holds that all noncitizens who entered the United States without admission or parole are considered applicants for admission and are ineligible for immigration judge bond hearings.

II. Respondent's Policy on Section 1225(b)(2) Is Incorrect

55. Respondent's policy, that all undocumented noncitizens who entered without inspection are considered applicants for admission and subject to mandatory detention under Section 1225(b)(2)(A), is incorrect. Instead, the statutory text, the statutory framework, Congressional intent, the longstanding practice of the agency, and the decisions of many federal courts across the nation – including this one – limit Section 1225(b)(2)'s scope to recently arrived noncitizens seeking admission at a border or port of entry.

a. Statutory Text

56. The text of Section 1225, along with its placement in the overall detention scheme of the INA, make clear that the terms "applicant for admission" and "seeking admission" in

Section 1225(b)(2) do not include individuals who have entered without inspection and are apprehended when already inside the United States.

57. Section 1225 is titled: "Inspection by immigration officers; expedited removal of inadmissible *arriving* aliens; referral for hearing." (emphasis added). As courts have recognized, "[t]he added word of 'arriving' indicates that the statute governs 'arriving' noncitizens, not those present already." *Beltran Barrera v. Tindall*, No. 3:25-CV-541-RGJ, 2025 WL 2690565, at *4 (W.D. Ky. Sept. 19, 2025) (citing *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425, at *5 (E.D. Mich. Sept. 9, 2025)). This limitation is particularly clear when compared to Section 1226's general title: "Apprehension and detention of aliens."

58. Further, Section 1225(b)(2)'s specific subheading, "Inspection of Other Aliens," subsection 1225(b)(2)(B)'s mention of "crewm[e]n" and "stowaway[s]," and subsection 1225(b)(2)(C)'s use of the active language "arriving," reinforce the limited scope of Section 1225(b)(2)'s applicability to those who have recently arrived at a border or port of entry.

59. Finally, the term "seeking" in "seeking admission" "implies action – something that is currently occurring, and in this instance, would most logically occur at the border upon inspection." *Lopez-Campos*, 2025 WL 2496379, at *6 (E.D. Mich. Aug. 29, 2025); *see also Beltran Barrera,* 2025 WL 2690565, at *4. Noncitizens who are present in the country for years are not "seeking admission." *Lopez-Campos*, at *6; *Beltran Barrera*, at *4.

b. Statutory Framework

60. The statutory framework further supports that Section 1225(b)(2) does not apply to noncitizens, like Petitioner, who have lived in the United States for years and who were apprehended while residing within the United States.

61. The INA's entire framework is premised on Section 1225 governing detention of "arriving [noncitizens]" while Section 1226 "applies to [noncitizens] already present in the United States." *Jennings*, 583 U.S. at 288, 301; *see also Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588, at *8 (S.D.N.Y. Aug. 13, 2025) ("[T]he line historically drawn between sections 1225 and 1226, which makes sense of their text and the overall statutory scheme, is that section 1225 governs detention of non-citizens 'seeking admission into the country,' whereas section 1226 governs detention of non-citizens 'already in the country.'") (cleaned up) (citing *Jennings*, 583 U.S. at 288-89); *Martinez v. Hyde*, 2025 WL 2084238, at *8 (D. Mass. July 24, 2025) ("The idea that a different detention scheme would apply to non-citizens 'already in the country,' as compared to those 'seeking admission into the country,' is consonant with the core logic of our immigration system ") (cleaned up) (citing *Jennings*, 583 U.S. at 289).

62. A fundamental principle of statutory construction is that courts must interpret statutes to give meaning to all provisions and avoid reading out or rendering superfluous any single provision. *Corley v. United States*, 556 U.S. 303, 314 (2009) ("one of the most basic interpretive canons . . . [a] statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant[.]") (cleaned up). The government's current reading of Section 1225(b)(2) violates this principle.

63. Section 1226(c) includes carve outs for certain categories of inadmissible noncitizens, who would otherwise fall under Section 1226(a), that are instead subject to mandatory detention. 8 U.S.C. § 1226(c)(1)(A), (D), (E). The inclusion of these carve outs in Section 1226(c) indicates that, contrary to Respondents' interpretation, there are noncitizens who have not been admitted and that are not governed by Section 1225's mandatory detention

scheme. Indeed, if the government's interpretation were correct, it would render these portions of Section 1226(c) superfluous since those same individuals would already be subject to mandatory detention under Section 1225(b)(2).

64. The recent amendment to Section 1226(c) confirms this statutory framework. Just this year, Congress passed the *Laken Riley Act*, which added additional categories of Section 1226(a) carve outs that are now subject to mandatory detention under Section 1226(c). Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025); 8 U.S.C. § 1226(c)(1)(E). Specifically, the Laken Riley Act mandates the detention of noncitizens who are inadmissible under §§ 1182(a)(6)(A) (noncitizens "present in the United States without being admitted or paroled"), 1182(a)(6)(C) (misrepresentation), or 1182(a)(7) (lacking valid documentation) and *who have been arrested for, charged with, or* convicted of certain crimes. *Id.* Again, if Section 1225(b)(2) were already meant to subject these groups of inadmissible noncitizens to mandatory detention, it would render this portion of the Laken Riley Act redundant. *See Beltran Barrera*, 2025 WL 2690565, at *4; *Lopez-Campos*, 2025 WL 2496379, at *8.

c. Congressional Intent and Longstanding Agency Practice

65. Congressional intent and longstanding historical practice underscore Petitioner's reading of the statute.

66. The current detention system has been in place since the passage 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.

67. Following the enactment of the IIRIRA, the Executive Office for Immigration Review drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under Section 1225 and that they were instead

detained under Section 1226(a) and eligible for bond and bond redetermination. *See* 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

68. In the decades that followed, most people who entered without inspection and were apprehended inside the United States were detained under Section 1226(a) and received bond hearings, unless their criminal history rendered them ineligible. That practice was consistent with many more 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 Section 1226(a) simply "restates" the detention authority previously found at Section 1252(a)).

d. Recent Federal Court Decisions Confirming Petitioner's Position

69. Numerous federal courts have reached conclusions consistent with Petitioner's position. For example, after immigration judges in the Tacoma, Washington, stopped providing bond hearings for persons who entered the United States without inspection, 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 not apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239. Other courts have reached the same conclusion, rejecting Respondent's erroneous interpretation of the INA both prior to and since ICE implemented its July 8, 2025, interim guidance. *See, e.g.*, *Gomes v. Hyde*, 2025 WL 1869299, at *8; *Martinez,* 2025 WL 2084238; *Lopez Benitez,* 2025 WL 2371588; *Garcia Jimenez v. Kramer*, No. 4:25-cv-03162-JFB-RCC, 2025 WL 2374223 (D. Neb. Aug. 14, 2025); *Aguilar Maldonado v. Olson*, No. 25-CV-3142 (SRN/SGE), 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v Noem*, 5:25-cv-

01789-ODW-DFM, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Jacinto v. Trump, et al.*, 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 (D. Neb. August 19, 2025); *Leal-Hernandez v. Noem*, 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Lopez-Campos*, 2025 WL 2496379; *Herrera Torralba v. Knight*, 2:25-cv-03166-RFB-DJA, 2025 WL 2581792 (D. Nev. Sept. 5, 2025).

70. The BIA's decision in *Yajure Hurtado* has not slowed the steady flow of decisions rejecting Respondents' position. *See, e.g., Singh v. Lewis*, 2025 WL 2699219, at *3 (disagreeing with BIA's analysis and according no deference under *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 413 (2024)); *Beltran Barrera*, 2025 WL 2690565, at *5 (same); *Pizarro Reyes v. Raycraft*, 2025 WL 2609425, at *6-8 (same); *Sampiao v. Hyde*, 2025 WL 2607924, at *8 n.11 (D. Mass. Sept. 9, 2025) (same); *Aceros v. Kaiser*, No. 25-CV-06924-EMC (EMC), 2025 WL 2637503, at *9 (N.D. Cal. Sept. 12, 2025) (same).

III. Petitioner's Detention Violates the INA

71. Petitioner's detention is not authorized under Section 1225(b)(2).

72. As discussed above, mandatory detention under Section 1225(b)(2) applies only to recently arrived noncitizens seeking admission at a border or port of entry, not individuals who entered without inspection and were later detained inside the country.

73. Here, "there is nothing in the record to suggest that HESIQUIO PEREZ ALVARADO ever attempted to gain lawful entry." *Lopez-Campos*, 2025 WL 2496379, at *6. Petitioner entered without inspection, never encountered a DHS official, and lived in the United States for 29 years prior to being detained. In addition, the warrant and Notice of Custody Determination were issued by Respondents both may cite to Section 1226(a) as the detention authority based upon information and belief. However, assuming that Respondents claim the

actual basis for his detention was Section 1225(b)(2), such a post-hoc justification deserves no credit. *Beltran Barrera*, 2025 WL 2690565, at *4; *Singh v. Lewis*, 2025 WL 2699219, at *5; *Lopez-Campos*, 2025 WL 2496379, at *7.] As such, Petitioner is not subject to mandatory detention under Section 1225(b)(2).

74. Petitioner's detention is not authorized under Section 1226(a), either. As discussed above, Section 1226(a)'s discretionary detention framework requires a bond hearing to make an individualized custody determination based on Petitioner's risk of flight or dangerousness. Here, Respondents have failed to provide such a hearing. Further, there is no information indicating that Petitioner is a flight risk or danger to the community.

75. Lacking any statutory basis for her detention, Respondent must release Petitioner or, in the alternative, promptly hold a bond hearing to determine whether he should remain in custody.

IV. Due Process Clause

76. 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).

77. 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.

a. Private Interest

78. 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 for more than 24 hours at the BSSC in conditions that are indistinguishable from criminal incarceration, but arguably worse according to one recent decision in this court earlier this week. This detention prevents him from seeing and caring for his family, particularly his significantly disabled son, Julian, but also bars him from going to work to support himself, but also deprives him of any privacy and freedom of movement.

b. ***Risk of Erroneous Deprivation***

79. 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 current procedures cause an erroneous deprivation of Petitioner's liberty interest in remaining free from detention.

80. As discussed above, the statutory text, statutory framework, Congressional intent, the longstanding practice of the agency, and the decisions of many federal courts across the nation leave no doubt that Section 1225(b)(2) applies only to recently arrived noncitizens seeking entry at a border or port of entry, not noncitizens who entered without inspection and were detained inside the country.

81. Here, Petitioner was not arriving at a border or port of entry when he was detained, nor was he ever seeking admission to the country. Instead, he entered without inspection, never had any encounter with DHS officials, and lived in the United States for more

than 29 years before being detained. As such, Petitioner is not subject to mandatory detention under Section 1225(b)(2).

82. Therefore, it is clear that the government's current procedure, 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.

83. Additionally, there are reasonable alternatives available for Respondent to pursue. As discussed above, Section 1226(a) applies to noncitizens facing charges of inadmissibility, including noncitizens like Petitioner who entered without inspection and were later detained while residing inside the country. As such, proper application of the INA's detention scheme allows for the possibility of detaining Petitioner under Section 1226(a) but first requires a bond hearing to make an individualized determination of his risk of flight or dangerousness. Such a hearing has not happened. Without it, the risk of erroneous deprivation of Petitioner's freedom is high. *See Singh v. Lewis*, 2025 WL 2699219, at *9 ("the risk of erroneously depriving him of his freedom is high if the IJ fails to assess his risk of flight or dangerousness.").

c. Government Interest

84. 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 years 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.

CLAIMS FOR RELIEF

COUNT I
Violation of the INA

85. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

86. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who previously entered the country and have been residing in the United States prior to being detained and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231. But Respondents' actions here violate § 1226(a) too because, to date, Respondents have refused to consider Petitioner for bond without ever demonstrating that he is a flight risk or danger to others.

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

COUNT II
Violation of Due Process

88. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

89. 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).

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

91. Petitioner entered the country without inspection, had no contact with any DHS officials, and lived in the United States for over 29 years before being detained. Such an individual may only be subject to discretionary detention under 8 U.S.C. § 1226, which provides for release on bond. Whether Petitioner was issued a warrant and Notice of Custody Determination under § 1226 or 1225(b)(2), Respondents now erroneously detain the Petitioner.

92. Respondents' detention of Petitioner without the possibility of a bond redetermination hearing to determine whether he is a flight risk or danger to others violates his right to due process. Respondent's invocation of the automatic stay to continue detaining Petitioner without ever demonstrating that he is a flight risk or danger to others, and despite the immigration judge's individualized determination to the contrary, 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 that Respondents immediately release Petitioner or, in the alternative, provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) within 14 days;

c. Enjoin Respondents from moving Petitioner outside the jurisdiction of this Court pending adjudication of this petition;

d. Declare that Petitioner's continued detention violates the INA and the Due Process Clause of the Fifth Amendment;

e. 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 basis justified under law; and

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

DATED this 6th Day of November, 2025

Respectfully submitted,

/S/ KEVIN L. DIXLER
Attorneys for Petitioner

VERIFICATION

Pursuant to 28 U.S.C. §§ 2242 and 1746, I declare under penalty of perjury that the facts set forth in the foregoing Petition for Habeas Corpus are true and correct.

Executed this 6th Day of November, 2025.

*/s/*KEVIN L. DIXLER