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

Alejandro Miguel Acosta-Balderas, Petitioner-Plaintiff, v. PAM BONDI, United States Attorney General; KRISTI LYNN NOEM, Secretary of the United States Department of Homeland Security; TODD M. LYONS, Director of United States Immigration and Customs Enforcement; SYLVESTER ORTEGA Field Office Director for Detention and Removal, U.S. Immigration and Customs Enforcement, ROSE THOMPSON, Warden, Karnes County Immigration Processing Center; Respondents-Defendants.	Civ. Case No. 5:25cv1629 DHS File Number: [redacted] **PETITION FOR HABEAS CORPUS**

The Petitioner, Alejandro Miguel Acosta-Balderas ("Mr. Acosta-Balderas"), respectfully petitions this Honorable Court for a Writ of Habeas Corpus to remedy Petitioner's unlawful detention and attempted removal from the United States by Respondents.

I. INTRODUCTION

1. This lawsuit seeks the immediate release of Plaintiff-Petitioner Alejandro Miguel Acosta-Balderas ("Petitioner"), age 35, from unlawful detention in violation of his constitutional and statutory rights.

2. On or about August 1, 2025, a law enforcement detained Mr. Acosta-Balderas in a traffic stop in the Austin area. Mr. Acosta-Balderas had a panic attack and was taken to the hospital for treatment. On August 2, 2025, Mr. Acosta-Balderas was taken into immigration custody from the hospital. He remains in civil detention in the custody of ICE at Karnes County Immigration Processing Center at Karnes City, Texas.

3. Mr. Acosta-Balderas has lived in the United States for over 20 years. He initially entered the United States without inspection in 2005. He departed in 2010. He last entered the United States in 2013. He is married to Rosa Mendez ("Rosa"). He is the father of fifteen-year-old daughter [redacted] and stepfather to Rosa's ten-year-old son [redacted]. Rosa and his two children are United States citizens. Although [redacted] lives in Mexico with her mother, she relies on the financial support of her father to pay for her education and medical care. Mr. Acosta-Balderas, his wife Rosa and stepson [redacted] live in Manor, Texas. He supports his family through his job as a machine operator. His detention is a substantial deprivation and burden that puts Petitioner and his family at risk of losing their housing, vehicles, and medical care without his parental, emotional, and financial support.

4. Petitioner has one arrest for shoplifting on August 4, 2010 in Georgia. This criminal charge was dismissed.

5. Petitioner's detention became unlawful when Petitioner was not entitled to bond due to the Board of Immigration Appeals published opinion in Matter of Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025) on September 5, 2025 which rendered pursuing a bond futile for non-citizens that entered the United States without inspection. Petitioner entered without inspection in 2005.

6. Petitioner is represented in immigration removal proceedings by counsel. Petitioner has filed an application for non-LPR cancellation of removal pursuant to 8 U.S.C. § 1229b(b)(1) as he has been physically present in the United States for at least 10 years and been a person of good moral character during that period. Moreover, he has no criminal convictions and has U.S. citizen spouse and two U.S. citizen children upon whom his removal would cause exceptional and extremely unusual hardship.

7. Petitioner respectfully requests this Court grant the instant petition for a writ of habeas corpus under 28 U.S.C. § 2241 and enjoin Respondent's continued detention of Petitioner to ensure his due process rights and his ability to provide care for his wife and children, who have needs that require Petitioner's presence and support. In the alternative, he respectfully requests the Court order Respondents to show cause why this Petition should not be granted within three days. *See* 28 U.S.C. § 2243. His continued detention is an unlawful violation of due process, incorrect interpretation of immigration law, and is *ultra vires*.

II. JURISDICTION AND VENUE

8. Petitioner is detained in civil immigration custody in the Karnes County Immigration Processing Center, Karnes City, Texas. He has been detained since or about, August 1, 2025. He has no criminal convictions.

9. This action arises under the Constitution of the United States and the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et seq*.

10. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and where applicable Article I § 9, cl. 2 of the United States Constitution (Suspension Clause). 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.

11. Venue is proper in the Western District of Texas, Austin Division, under 28 U.S.C. § 1391, because Petitioner is detained in this District and a substantial part of the events giving rise to the claims in this action took place in this District. Venue is also proper under 28 U.S.C. § 2243 because the immediate custodians of Petitioner reside in this District.

III. REQUIREMENTS OF 28 U.S.C. § 2243, Writ of Habeas Corpus Issuance, Return, Hearing, and Decision

12. The Court either must grant the instant petition for writ of habeas corpus or issue an order to show cause to Respondents, unless Petitioner is not entitled to relief. If the Court issues an order to show cause, Respondents must file a response "within three days" unless this Court permits additional time for good cause, which is not to exceed twenty days. 28 U.S.C. § 2243.

13. 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 writ of habeas corpus, challenging illegality of detention, is reduced to a sham if the trial courts do not act within a reasonable time. *Rhueark v. Wade*, 540 F. 2d 1282, 1283 (5th Cir. 1976); *Jones v. Shell*, 572 F.2d 1278, 1280 (8th Cir. 1978). Due to the nature of this proceeding, Petitioner asks this Court to expedite proceedings in this case as necessary and practicable for justice.

IV. PARTIES

14. Petitioner is Mr. Acosta-Balderas. He is 35 years old. He was born in Mexico in 1990 and came to the United States in 2005. Prior to his detention, he was living with and supporting his U.S. citizen wife and children in Manor, Texas. Petitioner is the subject of a removal proceeding based upon the charges of being present in the U.S. without being "admitted or paroled, or [having] arrived in the [U.S.] at any time or place other than as designated by the Attorney General" under INA § 212(a)(6)(A)(i), codified at 8 U.S.C. § 1182(a)(6)(A)(i).

15. He has been in civil immigration detention since August 1, 2025.

16. Respondent Pamela Bondi is named in their official capacity as the U.S. She is responsible for the administration and policy of the immigration courts, which resulted in the denying of this noncitizen's attempt to seek a custody redetermination from the U.S. Department of Justice under 8 C.F.R. §1003.19.

17. Respondent Kristi Noem is named in their official capacity as the Secretary of U.S. Department of Homeland Security. DHS is a department of the executive branch of the U.S. government that is tasked with, among other things, administering and enforcing the federal immigration laws. Secretary Noem is ultimately responsible for the actions of ICE; specifically, they are responsible for the administration of the immigration laws pursuant to Section 103(a) of the INA, 8 U.S.C. § 1103(a). Secretary Noem is legally responsible for the Office of the Principle Legal Advisor of ICE, and in any effort to detain and remove the Petitioner and as such is a legal custodian of Petitioner.

18. Respondent Todd M. Lyons is named in their official capacity as the Acting Director of U.S. Immigration and Customs Enforcement. ICE is the agency within DHS that is specifically responsible for managing all aspects of the immigration enforcement process, including immigration detention. ICE is responsible for apprehension, incarceration, and removal of noncitizens from the United States and as such Acting Director Lyons is a legal custodian of Petitioner.

19. Respondent Sylvester Ortega is named in their official capacity as the Field Office Director for the San Antonio Field Office of ICE. Director Ortega is responsible for the enforcement of the immigration laws within this district, and for ensuring that ICE officials follow the agency's policies and procedures. Director Ortega is a legal custodian of Petitioner.

20. Respondent Rose Thompson is named in their official capacity as the warden of Karnes Processing Center. They have immediate physical custody of Petitioner pursuant to an agreement with ICE to detain noncitizens and is a legal custodian of Petitioner.

V. FACTUAL ALLEGATIONS

21. Mr. Acosta-Balderas detained at a traffic stop on August 1, 2025 in Travis County, Texas. He was transferred to ICE custody that same day. ICE held him without bond since August 1, 2025. Section 236 of the INA is codified at 8 U.S.C. § 1226 and noncitizens held under its authority have a right to have their custody determination reviewed by an IJ. *See id.*

22. Mr. Acosta-Balderas entered without inspection in 2005. A request for bond is futile under Board of Immigration Appeals published opinion in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Following the interpretation of the aforementioned BIA decision, Immigration Judges do not have jurisdiction to hear the bond request or grant a bond to Petitioner due to being present in the United States without admission.

23. It has been widely reported that ICE internally released "interim guidance" regarding a change in their longstanding interpretation of which noncitizens are eligible for release on bond; specifically, ICE is now arguing that only those already admitted to the U.S. (typically requiring lengthy legal efforts with representation of counsel, such as adjusting status to a legal permanent resident or refugee) are eligible to be released from custody during their removal proceedings, and that all others are subject to mandatory detention under 8 U.S.C. § 1225, instead of 8 U.S.C. § 1226, and will remain detained

with only extremely limited parole options at ICE's discretion. Ex. 1, Interim Guidance Regarding Detention Authority for Application for Admission (July 8, 2025). This is a reversal of ICE's established practice of releasing from custody the majority of noncitizens in removal proceedings, who are found not to pose a flight risk or a danger to the community, on bond.

24. This novel interpretation means that potentially millions noncitizens who entered the United States without inspection (who have not already been formally admitted or paroled) that are contacted by ICE in the interior of the U.S. will be treated as if they were an "arriving alien" at the border and subject to mandatory detention, regardless of how long they have been present in the United States or other equities (such as complete lack of criminal history or U.S. citizen family members including dependent children). ICE will now argue all of these noncitizens are not even entitled to a bond hearing by an IJ on the issue of release from custody during the pendency of removal proceedings.

25. Mr. Acosta-Balderas remains in detention and separated from his family and community. He is experiencing significant and deep emotional and mental trauma from this separation from all those he loves. His wife is struggling with extreme depression and anxiety. She is missing work due to medical appointments. She is unable to pay for their household bills and is quickly falling behind on paying essential household bills like rent, groceries, and car expenses. His stepson is struggling in school due to the loss of his father and his preexisting learning disabilities as well as his depression and anxiety. His daughter is struggling financially and her mom is behind on payments.

26. In addition, Mr. Acosta-Balderas is unable to support and provide for his family because he is detained and unable to continue as a breadwinner. His family is only able to communicate with their father via pre-paid phone calls. It is very difficult for his wife to communicate with Petitioner regularly due to the cost of the phone calls and the distress these calls cause their son. His wife suffers from depression and anxiety for which she is currently taking medication. Petitioner's U.S. citizen daughter lives in Mexico with her biological mother and relies on Petitioner for financial assistance and

emotional support. Due to his detention, Petitioner cannot send his daughter the money she needs for her educational and medical needs. He has been completely cut off from his daughter as he is unable to communicate with her from detention.

27. Mr. Acosta-Balderas's continued detention separates him from his family, prohibits his removal defense in many ways, including by making it difficult to communicate with witnesses, gather evidence, and afford legal representation, among other related harms. He remains detained over one hour away from his family, his counsel, and support system and continues to be subjected to the aforementioned harms.

VI. LEGAL FRAMEWORK: Due Process Clause

28. "It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings." *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). "Freedom 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 v. Davis*, 533 U.S. 678, 690 (2001).

29. Due Process requires that there be "adequate procedural protections" to ensure that the government's asserted justification for a noncitizen's physical confinement "outweighs the 'individual's constitutionally protected interest in avoiding physical restraint.'" *Id.* at 690 (quoting *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997)). In the immigration context, the Supreme Court only recognizes two purposes for civil detention: preventing flight and mitigating the risks of danger to the community. *Zadvydas*, 533 U.S. at 690; Demore, 538 U.S. at 528. A noncitizen may only be detained based on these two justifications if they are otherwise statutorily eligible for bond. *Zadvydas*, 533 U.S. at 690.

30. "The fundamental requirement of due process is the opportunity be heard at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333

(1976). To determine what process Petitioner is due, this Court should consider (1) the private interest affected by the government action; (2) the risk that current procedures will cause an erroneous deprivation of that private interest, and the extent to which that risk could be reduced by additional safeguards; and (3) the government's interest in maintaining the current procedures, including the governmental function involved and the fiscal and administrative burdens that the substitute procedural requirement would entail. *Id.* at 335.

A. Immigration and Nationality Act

31. Title 8 of the United States Code, Section 1221 *et seq.*, controls the United States Government's authority to detain noncitizens during their removal proceedings.

32. The INA authorizes detention for noncitizens under four distinct provisions:

1) **Discretionary Detention. 8 U.S.C. § 1226(a)** generally allows for the detention of noncitizens who are in regular, non-expedited removal proceedings; however, permits those noncitizens who are not subject to mandatory detention to be released on bond or on their own recognizance.

2) **Mandatory Detention of "Criminal" Noncitizens. 8 U.S.C. § 1226(c)** generally requires the mandatory detention of noncitizens who are removable because of certain criminal or terrorist-related activity after they have been released from criminal incarceration.

3) **Mandatory Detention of "Applicants for Admission." 8 U.S.C. § 1225(b)** generally requires detention for certain noncitizen applicants for admission, such as those noncitizens arriving in the U.S. at a port of entry or other noncitizens who have not been admitted or paroled into the U.S. and are apprehended soon after crossing the border.

4) **Detention Following Completion of Removal Proceedings. 8 U.S.C. § 1231(a)** generally requires the detention of certain noncitizens who are subject to a final removal order during the 90-day period after the completion of removal proceedings and permits the detention of certain noncitizens beyond that period. *Id.* at § 1231(a)(2), (6).

33. The instant case concerns the detention provisions at §§ 1226(a) and 1225(b). Both detention provisions, §§ 1226(a) and 1225(b), 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).

34. Following 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 § 1225(b) and that they were instead detained under § 1226(a) after an arrest warrant was issued by the Attorney General. 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) ("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") (emphasis added).

35. For nearly thirty years, the practice of the government, specifically ICE and Executive Office for Immigration Review, which operate under DHS, was that most individual noncitizens that were apprehended in the interior of the United States after they had been living in the U.S. for more than two years (as opposed to "arriving" at a point of entry, border crossing, or being apprehended near the border and soon after entering without inspection) received a bond hearing. If determined to not be a danger to the community or a flight risk and, as a result, granted a change in custody status, the individuals were

released from detention either on their own recognizance or after paying the bond amount set by the IJ in full. 8 U.S.C. § 1226(a)(2)(A).

36. Recently, ICE has—without warning and without any publicly stated rationale—reversed course and adopted a policy of attempting to treat all individual noncitizens that were not previously admitted to the U.S. that are contacted in the interior of the U.S. at any time after their entry as "arriving" and ineligible for bond regardless of the particularities of their case. As a result, ICE is now ignoring particularities that have historically been highly relevant to determinations whether a noncitizen such remain or custody or be released—such as: when, why, or how they entered the U.S.; whether they have criminal convictions; whether they present a danger to the community or flight risk; whether they have serious medical conditions requiring ongoing care; whether U.S. citizen family members dependent upon them to provide necessary care; or, whether the noncitizen's detention is in the community's best interest. ICE now reasons that the mandatory detention provision of § 1225(b)(2)(A) applies to all people who enter without inspection who are alleged to be subject to grounds of inadmissibility at § 1182.

37. As a result of ICE's interpretation and practice change, individual noncitizens, including long-time U.S. community members and even those who have had their particular circumstances reviewed and were ordered to be released upon posting bond by an IJ, continue to be detained by ICE. Here, Petitioner's circumstances were not reviewed because of ICE's and the BIA's erroneous interpretation of the statutory scheme.

38. The government's erroneous interpretation of the INA as it relates to noncitizens subject to mandatory detention defies the plain text of 8 U.S.C. § 1226. The government's assertion is laid out in *Matter of Yajure Hurtado*. The government assertion that Petitioner is detained under § 1225—even though he was arrested and detained under § 1226—is meritless. Petitioner came to be in immigration proceedings based on a DHS filing that clearly identified him as subject to detention "pursuant to the authority contained in section 236"; (section 236 of the INA is codified at 8 U.S.C. § 1226.). For decades, § 1225 has applied only to noncitizens "seeking admission into the country"—

i.e., new arrivals. *Jennings*, 583 U.S. at 289. This contrasts with § 1226, which applies to noncitizens "already in the country." *Id.* at 289. Petitioner has been in the United States for over 20 years.

39. This new interpretation is now advanced by the government after decades of consistent use to the contrary. The government's position contravenes the plain language of the INA and its regulations and has been consistently rejected by courts. *See, e.g., Gonzalez Guerrero v. Noem*, No. 1:25-CV-01334-RP (W.D. Tex. Oct. 27, 2025) (granting preliminary injunction and vacating the BIA decision for bond denial under Matter of Yajure Hurtado) (citing *Buenrostro-Mendez*, 2025 WL 2886346, at *3 ("As almost every district court to consider this issue has concluded, 'the statutory text, the statute's history, Congressional intent, and § 1226(a)'s application for the past three decades' support finding that § 1226 applies to these circumstances.") (*citing Pizarro Reyes*, 2025 WL 2609425, at *4); *see also Lopez-Arevelo*, 2025 WL 2691828, at *7 ("In recent weeks, courts across the country have held that this new, expansive interpretation of mandatory detention under the INA is either incorrect or likely incorrect."); *Rodriguez*, 2025 WL 2782499, at *1 & n.3 (W.D. Wash. Sep. 30, 2025) (collecting cases and noting that "[e]very district court to address" the statutory question "has concluded that the government's position belies the statutory text of the INA, canons of statutory interpretation, legislative history, and longstanding agency practice"); *Belsai D.S. v. Bondi*, No. 25-cv-3682, 2025 WL 2802947, at *6 (D. Minn. Oct. 1, 2025) (joining the "chorus" of courts concluding that § 1226 applies); *Hernandez Ramiro v. Bondi*, No. 5:25-CV-01207-XR (W.D. Tex. Sept. 30, 2025) (granting temporary restraining order and stating " Respondents pointed to the Board's determination regarding the applicability of § 1225 for support. But 'the Court does not find that the [Board]'s alleged change in the interpretation of the subject statutes controls the Court's authority here.' *Kostak v. Trump*, No. CV 3:25-1093, 2025 WL 2472136, at *2 (W.D. La. Aug. 27, 2025) (citing *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 395 (2024)). Besides, the Board's interpretation has been subject to criticism upon judicial review. *See Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *7 (W.D. Tex. Sept. 22, 2025) ("In recent weeks, courts across the country have held that this

new, expansive interpretation of mandatory detention under the INA is either incorrect or likely incorrect."); *Martinez*, 2025 WL 2084238; *Gomes v. Hyde*, No. 1:25-cv-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Rodriguez v. Bostock*, No. 3:25-cv-05240-TMC, 2025 WL 1193850 (W.D. Wash. Apr. 24, 2025). See also "More than 100 Judges have ruled against Trump's admin's mandatory detention policy" by Kyle Cheney, POLITICO, published October 21, 2025,https://www.politico.com/news/2025/10/31/trump-administration-mandatory-detention-deportation-00632086. ("More than 100 federal judges have now ruled at least 200 times that the Trump administration's effort to systematically detain immigrants facing possible deportation appeared to violate their rights or was just flatly illegal…'The overwhelming majority of district courts across the country, including this Court, that have considered [the Trump administration's] new statutory interpretation have found it incorrect and unlawful,' ruled U.S. District Judge Richard Boulware, an appointee of Barack Obama."). See also Inspection and Expedited Removal of Aliens, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) (explaining that "[d]espite 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").

40. This new interpretation is inconsistent with the plain language of the INA. First, the government disregards a key phrase in § 1225. "[I]n the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien ***seeking admission*** is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a[.]" 8 U.S.C. § 1225(b)(2)(A) (emphasis added). In other words, mandatory detention applies when "the individual is: (1) an 'applicant for admission'; (2) 'seeking admission'; and (3) 'not clearly and beyond a doubt entitled to be admitted.'" *Martinez*, 2025 WL 2084238, at *2.

41. The "seeking admission" language, "necessarily implies some sort of present tense action." *Martinez*, 2025 WL 2084238, at *6; *see also Matter of MD-C-V-*, 28 I. & N. Dec. 18, 23 (B.I.A. 2020) ("The use of the present progressive tense 'arriving,' rather

than the past tense 'arrived,' implies some temporal or geographic limit . . . ."); *U.S. v. Wilson*, 503 U.S. 329, 333 (1992) ("Congress' use of verb tense is significant in construing statutes.").

42. In other words, the plain language of § 1225 applies to immigrants currently seeking admission into the United States at the nation's border or another point of entry. It does not apply to noncitizens "already present in the United States"—only § 1226 applies in those cases. *See Jennings*, 583 U.S. at 303.

43. When interpreting a statute, "every clause and word . . . should have meaning." *United States ex rel. Polansky, M.D. v. Exec. Health Res., Inc.*, 599 U.S. 419, 432 (2023) (internal quotation marks and citation omitted). And "the words of the statute must be read in their context and with a view to their place in the overall statutory scheme." *Gundy v. United States*, 588 U.S. 128, 141 (2019) (quotation omitted). The government's position requires the Court to ignore critical provisions of the INA.

44. Second, the government's interpretation would render newly enacted portions of the INA superfluous. "When Congress amends legislation, courts must presume it intends its amendment to have real and substantial effect." *Van Buren v. United States*, 593 U.S. 374, 393 (2021). Congress passed the Laken Riley Act (the "Act") in January 2025. The Act amended several provisions of the INA, including §§ 1225 and 1226. Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025). Relevant here, the Act added a new category of noncitizens subject to mandatory detention under § 1226(c)—those already present in the United States who have also been arrested, charged with, or convicted of certain crimes. 8 U.S.C. § 1226(c)(1)(E); 8 U.S.C. § 1182(a)(6)(A). Of course, under the government's position, these individuals are already subject to mandatory detention under § 1225—rendering the amendment redundant. Likewise, mandatory-detention exceptions under § 1226(c) are meaningful only if there is a default of discretionary detention—and there is, under § 1226(a). *See Rodriguez*, 2025 WL 1193850, at *12.

45. Additionally, "[w]hen Congress adopts a new law against the backdrop of a longstanding administrative construction, the court generally presumes that the new provision works in harmony with what came before." *Monsalvo v. Bondi*, 604 U.S. ___, 145 S. Ct. 1232, 1242 (2025). Congress adopted the Act against the backdrop of decades of agency practice applying § 1226(a) to immigrants like Petitioner, who are present in the United States but have not been admitted or paroled. *Rodriguez*, 2025 WL 1193850, at *15; Martinez, 2025 WL 2084238, at *4; 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) ("Despite being applicants for admission, aliens who are present without having been admitted or paroled . . . will be eligible for bond and bond redetermination.").

46. Section 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." Removal hearings for noncitizens under 1226(a) are held under § 1229a, which "decid[e] the inadmissibility or deportability of a[] [noncitizen]."

47. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States.

48. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to Petitioner. Petitioner's continued detention is unlawful.

B. Board of Immigration Appeals

49. It is not necessary for Petitioner to first seek a bond hearing before the immigration judge given that his bond eligibility is foreclosed by *Matter of Yajure Hurtado*. Appealing the immigration judge's decision that he lacks jurisdiction to consider bond is an act in futility. The appeal would go to the same body that issued the erroneous *Matter of Yajure Hurtado* decision.

VII. CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION
Violation of the Due Process Clause of the Fifth Amendment of the United States Constitution

50. Petitioner repeats and incorporates by reference all allegations above as though set forth fully herein.

51. The Due Process Clause asks whether the government's deprivation of a person's life, liberty, or property is justified by a sufficient purpose. Here, there is no question that the government has deprived Petitioner of his liberty.

52. Mr. Acosta-Balderas's continued detention violates his right to substantive and procedural due process guaranteed by the Fifth Amendment to the U.S. Constitution.

53. The Due Process Clause of the Fifth Amendment to the U.S. Constitution provides that "[n]o person shall…be deprived of life, liberty, or property without due process of law." As a noncitizen who shows well over "two years" physical presence in the United States (he has 10 years), Petitioner is entitled to Due Process Clause protections against deprivation of liberty and property. *See Zadvydas*, 533 U.S. at 693 ("[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent."). Any deprivation of this fundamental liberty interest must be accompanied not only by adequate procedural protections, but also by a "sufficiently strong special justification" to outweigh the significant deprivation of liberty. *Id.* at 690.

54. Respondents have deprived Mr. Acosta-Balderas of his liberty interest protected by the Fifth Amendment by detaining his since August 1, 2025.

55. Mr. Acosta-Balderas's detention is improper because he has been deprived of a bond hearing. A hearing is if anything a right to be heard, and here the immigration judge

considered it a foregone conclusion that he was ineligible for bond, without considering the law or entertaining his counsel's arguments. Like the accused in criminal cases, habeas is proper. See *Moore v. Dempsey*, 261 U.S. 86 (1923); *Johnson v. Zerbst*, 304 U.S. 458 (1938); *Burns v. Wilson,* 346 U.S. 137, 154 (1953).

56. Respondents' actions in detaining Mr. Acosta-Balderas without any legal justification violate the Fifth Amendment.

57. The government's detention of Mr. Acosta-Balderas is unjustified. Respondents have not demonstrated that Petitioner needs to be detained. *See Zadvydas*, 533 U.S. at 690 (finding immigration detention must further the twin goals of (1) ensuring the noncitizen's appearance during removal proceedings and (2) preventing danger to the community). There is no credible argument that Petitioner cannot be safely released back to his community and family.

58. For these reasons, Petitioner's detention violates the Due Process Clause of the Fifth Amendment.

SECOND CAUSE OF ACTION

Violation of Immigration and Nationality Act

59. Petitioner repeats and incorporates by reference all allegations above as though set forth fully herein.

60. Mr. Acosta-Balderas was detained pursuant to authority contained in section 236 of the INA; section 236 is codified at 8 U.S.C. § 1226. Despite this, the government asserts that he is detained subject to 8 U.S.C. § 1225(b)(2).

61. 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. Mandatory detention does not apply to those who previously entered the

country and have been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a) and are eligible for release on bond, unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

62. Respondents have wrongfully adopted a policy and practice of arguing all noncitizens, such as Petitioner, are subject to mandatory detention under § 1225(b)(2).

63. The unlawful application of § 1225(b)(2) to Petitioner violates the INA.

THIRD CAUSE OF ACTION

Fifth Amendment – Due Process

Denial of Opportunity to Contest Mis-Inclusion in Mandatory Category of Detention

64. Petitioner re-alleges and incorporates by reference the paragraphs above.

65. Mr. Acosta-Balderas has a vested liberty interest in preventing his removal because he is eligible for Cancellation of Removal for Certain Non-Legal Permanent Residents, and is entitled to pursue that relief outside of detention by showing he is neither a danger to the community nor a flight risk. He is separated now from his U.S. Citizen wife and two U.S. citizen children, notwithstanding the dictates of 8 U.S.C. §1226(a) that he may seek redetermination of his custody status with an IJ, and prove he is not a flight risk or danger.

66. For all of the above reasons, Respondents' attempts to detain Petitioner without a meaningful opportunity to be heard violate his Procedural Due Process rights under the Fifth Amendment.

FOURTH CAUSE OF ACTION:
ADMINISTRATIVE PROCEDURE ACT

67. Petitioner re-alleges and incorporates by reference the paragraphs above.

68. Respondents' continued efforts to deny his bond violate the INA, Administrative Procedures Act (APA), and the U.S. Constitution.

69. As set forth in Count Two and Three, federal regulations and case law provide the procedure for a respondent in removal proceedings like him to seek a bond determination by an IJ.

70. In being denied the opportunity to return to his family, and pursue Cancellation of Removal in a non-detained court setting where he is free to gather the necessary hardship and good moral character evidence, Mr. Acosta-Balderas would be deprived of the right to freedom to lawfully pursue his rights in this civil matter. The Government's "no-review" provisions are a violation of his procedural and substantive due process and without any statutory authority. There is no time-frame or procedure for requesting DHS to itself review its custody decision, and removal proceedings in this case will proceed during that time while Plaintiff remains in custody.

71. The actions by Respondents would improperly alter the substantive rules concerning mandatory custody status without the required notice-and-comment period and would be in violation of the INA and its regulations. These actions by Respondents violate the APA. Under the APA, this Court may hold unlawful and set aside an agency action which is "contrary to constitutional right, power, privilege or immunity." 5 U.S.C. § 706(2)(B). The regulations at 8 C.F.R. §§ 1003.19(h)(1)(B) and 1003.19(h)(2)(B) providing no review of DHS custody decision for arriving aliens in removal proceedings are in violation of substantive and procedural due process as guaranteed by the Fifth Amendment to the United States Constitution. It is ultra vires because it exceeds the authority granted ICE by Congress at 8 U.S.C. § 1226(a). For these reasons, this

Honorable Court should order the immigration judge to conduct a Neryph hearing[1] to determine whether or not Plaintiff is properly designated an arriving alien subject to mandatory detention during the pendency of his removal proceedings.

FIFTH CAUSE OF ACTION:
STAY OF REMOVAL CLAIM

72. Petitioner re-alleges and incorporates by reference the paragraphs above.

73. The denial of a bond hearing, followed by removal of Mr. Acosta-Balderas from the United States would cause him irreversible harm and injury because he is mis-classified by the Government as subject to mandatory detention.

74. The Court should grant the stay of Petitioner's removal to protect his statutory rights under the INA and the APA. In attempting to assert his rights, the Government has railroaded him and deprived him of freedom and liberty to contest his removal while free on bond, or at the very least, of his ability to prove he is not subject to mandatory detention and that he merits release on bond.

SIXTH CAUSE OF ACTION
SUSPENSION CLAUSE CLAIM

75. Petitioner re-alleges and incorporates by reference the paragraphs above.

76. If 8 U.S.C. § 1252 stripped the Court jurisdiction from this matter, it would be unconstitutional as applied because it would deny Mr. Acosta-Balderas the opportunity for meaningful review of the unlawfulness of his detention and removal.

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1 The Board of Immigration Appeals (BIA) decision in *Matter of Neryph* made clear that the Immigration Judge has jurisdiction to determine whether the respondent is properly included in the category preventing re-determination of custody status. *See Matter of Neryph*, 22 I&N Dec. 799 (BIA 1999). The regulations have codified this right to a Neryph hearing challenge at 8 C.F.R. §§ 1003.19(h)(1)(ii) and 8 C.F.R. §§ 1003.19(h)(2)(ii), but these subsections enumerate only three classes of aliens who can request Neryph hearings, specifically and nonsensically omitting two other classes of detained aliens, namely, arriving aliens in exclusion or removal proceedings..

77. To invoke the Suspension Clause, a petitioner must satisfy a three-factor test: "(1) the citizenship and status of the detainee and the adequacy of the process through which that status determination was made; (2) the nature of the sites where apprehension and then detention took place; and (3) the practical obstacles inherent in resolving the prisoner's entitlement to the writ." *Boumediene v. Bush*, 553 U.S. 723, 766 (2008). Mr. Cardona-Lozano satisfies these three requirements and may invoke the Suspension Clause.

78. First, although Mr. Acosta-Balderas is not a U.S. citizen or resident, he has lived here for 20 years, and he qualifies under the INA to seek Cancellation of Removal, because he has no criminal convictions, because he has lived here for ten continuous years, because he can show ten years' good moral character, and because he can show his U.S. citizen children and wife will suffer exceptional and extremely unusual hardship if he were removed to Mexico. Mr. Acosta-Balderas has significant family connections in the United States, including his wife, Rosa Mendez, who is a U.S. citizen, and two children. All of which establishes a substantial legal relationship with the United States.

79. Mr. Acosta-Balderas satisfies the second factor because he was apprehended by DHS and remains detained in the United States.

80. Finally, there are no serious, practical obstacles to resolving this present matter. This Court is equipped to deciding whether Mr. Acosta-Balderas is entitled to the writ.

81. There is no adequate alternative to a habeas petition. The refusal of the immigration court to grant Mr. Acosta-Balderas the right to show he is mis-classified and that he is not subject to mandatory detention, such that he may return to his family and pursue cancellation, without proper notice or due process, deprives his of his constitutional rights. The BIA cannot adequately and expeditiously review these issues.

SEVENTH CAUSE OF ACTION:
INJUNCTIVE RELIEF

82. Petitioner re-alleges and incorporates herein by reference each and every allegation contained in the above paragraphs of this Petition.

83. This Court has the discretion to enter a temporary restraining order and a preliminary injunction. *See Haitian Refugee Center v. Nelson*, 872 F.2d 1555, 1561-1562 (11th Cir. 1989). "To be entitled to a preliminary injunction, the applicants must show (1) a substantial likelihood that they will prevail on the merits, (2) a substantial threat that they will suffer irreparable injury if the injunction is not granted, (3) their substantial injury outweighs the threatened harm to the party whom they seek to enjoin, and (4) granting the preliminary injunction will not disserve the public interest." *Tex. Med. Providers Performing Abortion Servs. v. Lakey,* 667 F.3d 570, 574 (5th Cir. 2012). All four elements must be demonstrated to obtain injunctive relief. *Id.*

84. Respondents' actions have caused Petitioner harm that warrants immediate relief. There is substantial likelihood that Mr. Acosta-Balderas will prevail on the merits of his habeas claim as more than 100 federal judges have found the BIA decision in Matter of Yajure Hurtado to be an incorrect interpretation of the. There is substantial threat of irreparable injury if the injunction is not granted. Mr. Acosta-Balderas United States citizen wife is extremely depressed and anxious. She will not be able to manage working and childcare with her mental health issues. In addition, she is the sole caregiver to a ten-year-old boy who was abandoned by his father and struggles with depression, anxiety, and ADHD symptoms. Continued detention of Mr. Acosta-Balderas will result her in further economic instability placing her at risk of losing her housing and vehicles. In addition, his wife is suffering from a psychological crisis and has started taking medication. Mr. Acosta-Balderas detention further exacerbates her depression. The substantial and irreparable injury that Mr. Acosta-Balderas' wife and children face substantially outweighs any potential threat to the government. Mr. Acosta-Balderas

has no criminal convictions and is an established community member. It will not disserve the public interest in granting the preliminary injunction as it is in the public interest to keep families united and supporting each other. Granting a preliminary injunction is proper in this case. *See, e.g., Gonzalez Guerrero v. Noem*, No. 1:25-CV-01334-RP (W.D. Tex. Oct. 27, 2025) (granting preliminary injunction and vacating the BIA denial of bond jurisdiction under Matter of Yajure Hurtado).

VIII. RELIEF SOUGHT

WHEREFORE, Petitioner respectfully requests that this Court:

(1) Assume jurisdiction over this matter;

(2) Declare that ICE's August 1, 2025, apprehension and detention of Mr. Acosta-Balderas was an unlawful exercise of authority because the ICE officer provided no reason that he presents a danger to the community or is flight risk;

(3) Issue an order directing Respondents to show cause why the writ should not be granted;

(4) Order Respondents to file with the Court a complete copy of the administrative file from the Department of Justice and the Department of Homeland Security;

(5) Enjoin ICE from transferring Mr. Acosta-Balderas outside of the Western District of Texas while this matter is pending;

(6) Grant the writ of habeas corpus ordering Respondents to release Mr. Acosta-Balderas on his own recognizance, parole, or reasonable conditions of supervision, or order the Respondents to conduct a bond hearing under which it correctly applies the statutes and no longer mis-classifies him as subject to mandatory detention, in the alternative order a hearing under *Matter of Neryph*;

(7) Award the Petitioner reasonable costs and attorneys' fees under the Equal Access to Justice Act, as amended, 28 U.S.C. §2412; undersigned counsel recognizes the Fifth Circuit's decision in *Barco v. Witte*, 65 F.4th 782 (5th Cir. 2023) ruling that fees are not available to be awarded in 28 U.S.C. § 2241. Nonetheless, the issue is ripe for redetermination at the Fifth Circuit. At least two Circuit Courts and two district courts have disagreed with *Barco*. *See Vacchio v. Ashcroft,* 404 F.3d 663, 670-72 (2d Cir. 2005); *In re Petition of Hill,* 775 F.2d 1037, 1040-41 (9th Cir. 1985); *Abioye v. Oddo*, 2024 U.S. Dist. LEXIS 174205 (W. D. Penn. 2024): *Arias v. Choate*, 2023 U.S. Dist. LEXIS 119907 (Dist. Colo. 2023). Given ICE's recent actions in detaining individuals without substantial justification, EAJA fees are needed to ensure attorneys can confront detention that is unconstitutional.

(8) Grant any other relief that this Court deems just and proper.

Respectfully submitted on this 03 day of December, 2025

/s/ Nicole L. True
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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Alejandro Miguel Acosta-Balderas, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 03 day of December, 2025.

/s/ Nicole L. True
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CERTIFICATE OF SERVICE

I hereby certify that on December 03, 2025, I caused a true and correct copy of the foregoing Petition for Writ of Habeas Corpus and all accompanying exhibits to be served by certified mail, return receipt requested, on the following:

U.S. Attorney's Office for the Western District of Texas
Attn: Stephanie Rico | Civil Process Clerk
601 N.W. Loop 410, Suite 600
San Antonio, TX 78216

Warden, Karnes County Immigration Processing Center
Rose Thompson
409 FM 1144
Karnes City, TX 78118

Service on the United States Attorney constitutes service on all named federal Respondents in this matter, and service has also been made directly on the Warden as Petitioner's immediate custodian.

Dated this 03 day of December, 2025.

/s/ Nicole L. True
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