UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS

ALAIN ECHEVARRIA-HERNANDEZ Petitioner, v. Kristi NOEM, Secretary of the U.S. Department of Homeland Security; Pamela BONDI, U.S. Attorney General; Todd M. LYONS, Acting Director of Immigration and Customs Enforcement; Miguel VERGARA, Field Office Director of Enforcement and Removal Operations, San Antonio Field Office, Rose THOMPSON, Warden of Karnes County Immigration Processing Center, Defendants.	)	Case No. 5:25-cv-1631

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

Alain Echevarria-Hernandez (Mr. Echevarria-Hernandez), Petitioner, by and through undersigned counsel, and in support of his Petition for Writ of Habeas Corpus, states:

INTRODUCTION

1. For nearly thirty years immigration judges (IJ), immigration lawyers for noncitizens, and attorneys from the Department of Homeland Security (DHS) construed the Immigration and Nationality Act (INA) § 236; 8 U.S.C. § 1226(a), to allow for bond eligibility for noncitizens who entered the country without inspection. This was well-settled law.

2. Indeed, just this year when Congress passed the Laken Riley Act (LRA) it reasserted its understanding that noncitizens who entered the country without inspection are eligible for a bond.

Specifically, the LRA's amendments to 8 U.S.C. § 1226(c) add provisions providing that noncitizens who entered the country illegally and commit certain enumerated offenses are not eligible for a bond.

3. Congress would not have passed the LRA if it understood that noncitizens who entered the country unlawfully were already subject to mandatory detention under INA § 235; 8 U.S.C. § 1225.

4. Notwithstanding the plain language of §§ 1226 and 1225, on September 5, 2025, the Board of Immigration Appeals (BIA) decided *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), which ruled that any person who entered the United States without admission is mandatorily detained under 8 U.S.C. § 1225(b)(2)(A).

5. By disregarding the statutes' plain meaning, the BIA dramatically changed the practice of immigration resulting in the illegal detention of noncitizens across the country. *See, e.g.*, *Gomes v. Hyde*, No. 1:25-cv-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Martinez v. Hyde*, No. 1:25-cv-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025); *Lopez Benitez v. Francis*, No. 1:25-cv-05937-DEH, 2025 WL 2371588 (S.D.N.Y. Aug. 8, 2025); *Rosado v. Figueroa*, No. 2:25-cv-02157-DLR, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), report and recommendation adopted sub nom. *Rocha Rosado v. Figueroa*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Aguilar Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW-DFM, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 1:25-cv-06373-DEH, 2025 WL 2398831 (S.D.N.Y. Aug. 12, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-cv-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM,

2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Otero Escalante v. Bondi*, No. 25-cv-3051-ECT-DJF, --- F. Supp. 3d ----, 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez Garcia v. Noem*, No. 3:25-cv-02180-DMS-MMP, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-cv-02304-CAS-BFM, 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Jimenez v. Berlin*, ---F. Supp. 3d---, 2025 WL 2639390, at *10 (D. Mass. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-cv-12546-RJW-APP, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Palma Perez v. Berg*, No. 8:25-cv-00494-JFB-RCC, 2025 WL 2531566 (D. Neb. Sept. 3, 2025); *Reynosa Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 (D. Neb. Aug. 4, 2025); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-RCC, 2025 WL 2374224 (D. Neb. Aug. 14, 2025); *Hernandez Marcelo v. Trump*, No. 3:25-CV-00094-RGE-WPK, 2025 WL 2741230 (S.D. Iowa Sept. 10, 2025); *Vazquez v. Feeley*, No. 2:25-CV-01542-RFB-EJY, 2025 WL 2676082 (D. Nev. Sept. 17, 2025); *Luna Quispe v. Crawford*, No. 1:25-cv-1471-AJT-LRV, 2025 WL 2783799 (E.D. Va. Sep. 29, 2025); *Silva v. Larose*, No. 25-cv-2329-JES-KSC, 2025 WL 2770639 (S.D. Cal. Sep. 29, 2025); *Chang Barrios v. Shepley*, No. 1:25-cv-00406-JAW, 2025 WL 2772579 (D. Me. Sep. 29, 2025); *Belsai D.S. v. Bondi*, No. 25-cv-03682 (KMM/EMB), 2025 WL 2802947 (D. Minn. Oct. 1, 2025); *Guerrero Orellana v. Moniz*, No. 25-CV-12664-PBS, 2025 WL 2809996 (D. Mass. Oct. 3, 2025); *Cerritos Echevarria v. Bondi*, No. CV-25-03252-PHX-DWL (ESW), 2025 WL 2821282 (D. Ariz. Oct. 3, 2025).

6. The erroneous BIA decision in *Yajure Hurtado* dictates that the immigration judge lacks jurisdiction to consider bond requests for noncitizens who are present in the United States without admission or parole. As Mr. Echevarria-Hernandez entered the United States without inspection,

he falls within the category of noncitizens that *Yajure Hurtado* has rendered ineligible for bond. *See* Exhibit 1, Order of Release on Recognizance.

7. Relying on *Yajure Hurtado*, and based on new DHS policy issued on July 8, 2025, (instructing all Immigration and Customs Enforcement (ICE) employees to consider anyone inadmissible under § 1182(a)(6)(A)(i)—i.e., those who entered the United States without admission or inspection—to be subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond) DHS denied Mr. Echevarria-Hernandez release from immigration custody.

8. On November 25, 2025, the Central District of California issued an order granting class certification to:

> All noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) *were not* or will not be *apprehended upon arrival*; and (3) are not o will not be the subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination. [Emphasis added.]

See Bautista v. Santacruz, No. 5:25-cv-01873-SSS-BFM, Order Granting Plaintiffs' Motion for Class Certification, Doc. 82 (C.D. Cal. Nov. 25, 2025).

9. In its order for class certification, the Central District of California extended its determination on motion for summary judgment that, "[a]bsent Congressional action that repeals and revises § 1226(a), the directive that the Attorney General must either continue to detain the noncitizen or release the noncitizen on bond or parole persists." *See See Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM, Order Granting Petitioners' Motion for Partial Summary Judgment and Denying Request to Enter Final Judgment, Doc. 82 (C.D. Cal. Nov. 20, 2025).

10. Mr. Echevarria-Hernandez's detention on this basis violates the plain language of 8 U.S.C. § 1225(b)(2)(A) because it does not apply to individuals like Mr. Echevarria-Hernandez who previously entered and are now residing in the United States. Instead, such individuals are subject

to a different statute, § 1226(a), that allows for release on conditional parole or bond. Section 1226(a), expressly applies to people who, like Mr. Echevarria-Hernandez, are charged as inadmissible for having entered the United States without inspection.

11. This sudden deprivation of liberty is unsupported by any new legal or factual basis. Mr. Echevarria-Hernandez is now held without bond, in flagrant violation of statutory and constitutional due process protections.

12. Accordingly, Mr. Echevarria-Hernandez files this petition seeking a writ of habeas corpus ordering his release from custody immediately, or alternatively, order the Respondents to provide him with a bond hearing under § 1226(a) within seven days of the Court's order.

JURISDICTION

13. Mr. Echevarria-Hernandez is in physical custody of Respondents. He is detained at the Karnes County Immigration Processing Center in Karnes City, Texas. District Courts have jurisdiction to hear habeas corpus claims by noncitizens challenging the lawfulness or constitutionality of their detention by ICE. *See, e.g.*, *Jennings v. Rodriguez*, 583 U.S. 281, 292-96 (2018); *Demore v. Hyung Joon Kim*, 538 U.S. 510, 516-17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687-88 (2001).

14. 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).

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

VENUE

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

17. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493- 500 (1973), venue lies in the United States District Court for the Western District of Texas, the judicial district in which Mr. Echevarria-Hernandez currently is detained.

PARTIES

18. Mr. Echevarria-Hernandez is a citizen of Cuba who is currently detained in immigration custody since August 26, 2026. He is currently detained at Karnes County Immigration Processing Center in Karnes City, Texas. Mr. Echevarria-Hernandez is charged with, inter alia, having entered the United States without admission or inspection. *See* INA § 212 (a)(6)(A)(i); 8 U.S.C. § 1182(a)(6)(A)(i). *See* Exhibit 2, Notice to Appear.

19. Respondent Kristi Noem (Secretary Noem) is the Secretary of DHS and is charged with implementing the immigration laws of the United States. She is responsible for the implementation and enforcement of the INA, and oversees ICE, which is responsible for Mr. Echevarria-Hernandez's detention. Secretary Noem has ultimate custodial authority over Mr. Echevarria-Hernandez and is sued in her official capacity.

20. Respondent Pamela Bondi (General Bondi) is the Attorney General for the United States and is charged with overseeing the Executive Office for Immigration Review (EOIR). She is responsible for the Department of Justice, of which EOIR and the immigration court system it operates is a component agency. EOIR is the federal agency responsible for implementing and

enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings. General Bondi is sued in her official capacity.

21. Respondent Todd M. Lyons (Respondent Lyons) is the Acting Director of the ICE, a sub-agency of DHS. It is under ICE's authority that Mr. Echevarria-Hernandez is being held without bond. Respondent Lyons is being sued in his official capacity.

22. Respondent Miguel Vergara (Respondent Vergara) is the Field Office Director for the San Antonio ICE Field Office of ICE's Enforcement and Removal Operations division. It is under Respondent Vergara's order that Mr. Echevarria-Hernandez is in immigration custody. As such, Respondent Vergara is Mr. Echevarria-Hernandez's immediate custodian and is responsible for his detention and removal. Respondent Vergara is being sued in his official capacity.

23. Respondent Rose Thompson (Respondent Thompson) is employed by GEO as Warden of the Karnes County Immigration Processing Center, where Mr. Echevarria-Hernandez is detained. As warden, Respondent Thompson has immediate physical custody of Mr. Echevarria-Hernandez. Respondent Thompson is being sued in his official capacity.

REQUIREMENTS OF 28 U.S.C. § 2243

24. 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).

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, Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

LEGAL FRAMEWORK

26. Congress deliberately provided for immigration detention in two different statutes, 8 U.S.C. § 1226 and 8 U.S.C. § 1225, to address two very different groups of noncitizens in different circumstances. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104-–208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

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

28. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission enumerated under § 1225(b)(2).

29. Separately, 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).

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

A. 8 U.S.C. § 1226 – Bond for Apprehended or Detained Noncitizens

31. Section 1226(a) establishes the discretionary framework for noncitizens arrested and detained "[o]n warrant issued by the Attorney General." For such individuals, the Attorney General (1) "may continue to detain the arrested alien," (2) "may release the alien on . . . bond of at least $1,500," or (3) "may release the alien on . . . conditional parole." 8 U.S.C. § 1226(a)(1)-(2).

32. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a). *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).

33. Thus, in the decades that followed, most people who entered without inspection and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). 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 IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

34. When Congress enacted the LRA, it expanded 8 U.S.C. § 1226 by adding § 1226(c)(1)(E), which requires detention of individuals who (1) are inadmissible under §§ 1182(a)(6)(A), (C), or (7), *and* (2) who have been charged with, arrested for, or convicted of certain crimes, including burglary, theft, shoplifting, or crimes resulting in death or serious bodily injury. *See* Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).

35. The enactment of the LRA confirms that Congress did not intend for all noncitizens who entered the country unlawfully and are found within the interior of the United States to be subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A).

36. Indeed, the LRA explicitly provides for mandatory detention for noncitizens who both entered the country unlawfully *and* committed one of the above enumerated offenses within the United States. The LRA would not have been necessary if all noncitizens who entered the country illegally are subject to mandatory detention under § 1225(b)(2)(A).

37. 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. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission,"[1] claims that all persons who entered the United States without inspection shall now be subject to mandatory detention provision 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.

38. On September 5, 2025, the BIA adopted the same position in a published decision, *Matter of Yajure Hurtado*. There, the Board held that all noncitizens who entered the United States without admission or parole are subject to detention under § 1225(b)(2)(A) and are ineligible for IJ bond hearings. *Yajure Hurtado* effectively makes the LRA an unnecessary, needless bill. *See* 29 I&N Dec. 216.

39. Courts have likewise rejected *Matter of Yajure Hurtado*, which adopts the same reading of the statute as ICE. *See, e.g.*, *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp. 3d ----, 2025

[1] *Available at* https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission.

WL 2084238 (D. Mass. July 24, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d ----, 2025 WL 2466670 (D. Minn. Aug. 27, 2025) *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *see also, e.g.*, *Palma Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at *2 (D. Neb. Sept. 3, 2025) (noting that "[t]he Court tends to agree" that § 1226(a) and not § 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 at *3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-RCC, 2025 WL 2374224 at *2 (D. Neb. Aug. 14, 2025) (same).

40. Section 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." These removal hearings are held under INA § 240; 8 U.S.C. § 1229a, to "decid[e] the inadmissibility or deportability of a[] [noncitizen]."

41. Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole. Section 1226(a) "authorizes the Government to detain certain aliens *already in the country* pending outcome of removal proceedings." *Jennings*, 583 U.S. at 289 (emphasis added).

42. Mr. Echevarria-Hernandez has been in the country since 2022; he was issued an NTA and placed in proceedings. *See* Exhibits 1, Order of Release of Recognizance, and Exhibit 2, Notice to Appear. The logical conclusion, therefore, is that he is in custody under § 1226(a).

43. DHS makes an initial custody determination on whether to allow the noncitizen to be released pending the posting of a bond. *See* 8 C.F.R. § 1236. However, such determinations "may be reviewed by an Immigration Judge pursuant to 8 C.F.R. § 1236." *See* 8 C.F.R. § 1003.19(a).

44. Under 8 U.S.C. § 1226, an IJ may grant bond if the noncitizen demonstrates that he is not a danger to the community or pose a significant risk of flight. *Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006). Once a bond has been granted by the IJ, DHS is only authorized to revoke a bond upon a finding of materially changed circumstances meriting the noncitizen's return to custody. *See, e.g.*, *Matter of Sugay*, 17 I&N Dec. 637, 640 (BIA 1981) (finding a change in circumstances, in part, when it was determined that the noncitizen was "wanted for murder in the Philippines.")

45. Section 1226(c) requires mandatory detention for specifically enumerated categories of noncitizens. Section 1226(c), until recently, required the detention of noncitizens who are inadmissible or deportable because they have committed or been sentenced for certain criminal

offenses, or because they are affiliated with terrorist groups or activities. *See* §§ 1226(c)(1)(A)-(D).

46. Section 1226(a) leaves no doubt that it applies to people who confront removal for being inadmissible to the United States, including those who are present without admission or parole.

B. 8 U.S.C. § 1225(b) – Mandatory Detention for Inadmissible Arriving Aliens and Expedited Removal

47. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. The statute's entire framework is premised on inspections at the border of people who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A). The statute states:

> In the case of [a noncitizen] *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 of this title.

(Emphasis added).

48. For § 1225(b)(2)(A) to apply, "several conditions must be met—in particular, an 'examining immigration officer' must determine that the individual is: (1) an 'applicant for admission'; (2) 'seeking admission'; and (3) 'not clearly and beyond a doubt entitled to be admitted.'" *Martinez v. Hyde*, CV No. 25-11613-BEM, at *6-7. "One who is 'seeking admission' is presently attempting to gain admission into the United States." *Belsai D.S. v. Bondi*, No. 25-cv-03682 (KMM/EMB), 2025 WL 2802947, at *6 (D. Minn. Oct. 1, 2025). The Respondents' authority to detain noncitizens under §§ 1226 or 1225 depends on the individualized circumstances of the noncitizen and the procedural posture of the removal case.

49. As the Supreme Court has explained, the detention authority under 1225(b)(2)(A) applies "at the Nation's borders and ports of entry, where the Government must determine whether an alien

seeking to enter the country is admissible." *Jennings*, 583 U.S. at 287; *see also Lopez-Campos*, 2025 WL 2496379, at *18 ("1225(b)(2)(A) applies when people are being inspected, which usually occurs at the border, when they are seeking lawful entry into this country."). "Noncitizens who are just 'present' in the country—those like [Mr. Echevarria-Hernandez], who have been here for years upon years and never proceeded to obtain any form of citizenship (*e.g.* asylum, permanent residency, refugee status, visas, etc.)—are not 'seeking' admission." *Lopez-Campos,* 2025 WL 2496379, at *16–17.

50. Since Mr. Echevarria-Hernandez was detained in the United States approximately 3 years after his unlawful entry, he is obviously *not* seeking admission into the country and § 1225(b)(2)(A) is inapplicable. Because he is in custody under 8 U.S.C. § 1226, the IJ can order his release on bond. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like Mr. Echevarria-Hernandez, who have already entered and were residing in the United States at the time they were apprehended.

51. Indeed, the Supreme Court has explained that this mandatory detention 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 admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

C. Respondents' Misconstruction of 8 U.S.C. § 1225(B)(2)(A) has Resulted in Mr. Echevarria-Hernandez's Unlawful Detention

52. The Respondents' misconstruction of § 1225(B)(2)(A) as encompassing all noncitizens who entered the country illegally is contrary to decades of established practice and is part of their scheme to greatly expand immigration detention in general by using the mandatory detention provisions of 8 U.S.C. § 1225.

53. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission," claims that all persons who entered the United States without inspection shall now be subject to mandatory detention provision under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended, greatly affecting those who have resided in the United States for months, years, and even decades.

54. On September 5, 2025, the BIA—reversing decades of practice—adopted this same position in *Yajure Hurtado*. 29 I&N Dec. at 216. There, the BIA held that all noncitizens who entered the United States without admission or parole are subject to detention under § 1225(b)(2)(A) and are ineligible for IJ bond hearings. *Id.*

55. As demonstrated in the string at ¶ 40, infra, the Respondents efforts to expand 8 U.S.C. § 1225 to provide for more mandatory detention has been rejected by courts across the nation. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like Mr. Echevarria-Hernandez, who have already entered and were residing in the United States at the time they were apprehended.

56. This case involves the interplay between 8 U.S.C. § 1226 (general custody for individuals in traditional removal proceedings before an IJ) and the mandatory custody provisions of 8 U.S.C. § 1225(b)(2) that apply to those noncitizens seeking admission at the port of entry or the border.

FACTS

57. Mr. Echevarria-Hernandez has resided in the United States since April 2022. Upon his entry in April 2022, Mr. Echevarria-Hernandez was served with a Notice to Appear, with a hearing date set for May 2023 before an immigration judge. *See* Exhibit 2, Notice to Appear. The NTA alleges, in part, that Mr. Echevarria-Hernandez entered the country without admission or parole. *Id.*

58. Upon his entry in April 2022, ICE detained and released Mr. Echevarria-Hernandez from custody under an order of release on recognizance. He was ordered to report in person to ICE on May 3, 2022, and for subsequent check-ins thereafter. *See* Exhibit 1, Order of Release of Recognizance. In doing so, the Respondents determined that he posed no danger or flight risk and that pursuing his removal was not a priority. Mr. Echevarria-Hernandez has complied with the terms of his release.

59. Mr. Echevarria-Hernandez is currently in removal proceedings before the immigration court pursuant to 8 U.S.C. § 1229a. ICE has charged Mr. Echevarria-Hernandez with, *inter alia*, being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as someone who entered the United States without inspection.

60. Through his immigration counsel, in July 2022, Mr. Echevarria-Hernandez, filed an I-589 Application for Asylum and Withholding of Removal Application, claiming fear of persecution in Cuba. If granted, Mr. Echevarria-Hernandez's will be able to adjust to LPR status.

61. Separately, on March 25, 2025, Mr. Echevarria-Hernandez married Maria de Jesus Estrada Lomeli (Maria de Jesus), a U.S. Citizen. On June 17, 2025, Maria de Jesus filed a family-based I-130 Petition for Alien Relative naming the Mr. Echevarria-Hernandez as the beneficiary, which is currently pending with USCIS. If the petition is approved, Mr. Echevarria-Hernandez will be eligible to adjust to being a lawful permanent resident.

62. Despite years of full compliance with the conditions of his release, a pending family-based visa petition, and a pending asylum claim, DHS abruptly redetained Mr. Echevarria-Hernandez on August 6, 2025, while he was reporting at a routine ICE check-in. He was transferred to Karnes County Immigration Processing Center on November 4, 2025, and has been held there since. The redetention was not based on any materially changed circumstances.

63. On September 3, 2025, Mr. Echevarria-Hernandez's counsel filed a Motion for Bond Hearing and Jurisdictional Determination before the immigration judge. *See* Exhibit 3, Motion for Bond Hearing and Jurisdictional Determination. However, based on *Yajure Hurtado,* the immigration judge found he lacked jurisdiction to hear the matter or set a bond amount for Mr. Echevarria-Hernadez.

64. Mr. Echevarria-Hernandez does not have any criminal history in the U.S. or in Cuba. DHS did not allege criminal conduct against him. He attended all his hearings before the immigration judge. Thus, Mr. Echevarria-Hernandez is not a flight risk or a danger to the community.

65. As a result, Mr. Echevarria-Hernandez remains in detention. Without relief from this court, he faces the prospect of months, or even years, in immigration custody, separated from their family and community.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

66. Mr. Echevarria-Hernandez has exhausted his administrative remedies to the extent required by law. It would be futile to require Mr. Echevarria-Hernandez to file a bond redetermination request with the Immigration Court given that the BIA has already announced its decision on the issue of bond jurisdiction in *Yajure Hurtado*. In fact, Mr. Echevarria-Hernandez *was denied bond* due to lack of jurisdiction based on *Yajure Hurtado*.

67. In fact, *Yajure Hurtado* states that "Immigration Judges lack authority to hear bond requests or to grant bond to aliens, like the respondent, who are present in the United States without admission." *Yajure Hurtado*, 29 I&N Dec. at. 225 (emphasis added).

CLAIMS FOR RELIEF

COUNT I – Violation of the Immigration and Nationality Act

Mr. Echevarria-Hernandez is not subject to mandatory detention under § 1225(b)(2) and is eligible for bond under § 1226(a)

68. Mr. Echevarria-Hernandez incorporates by reference the allegations of fact set forth in the preceding paragraphs.

69. 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 apprehended 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.

70. The application of § 1225(b)(2) to Mr. Echevarria-Hernandez unlawfully mandates his continued detention and violates the INA. Mr. Echevarria-Hernandez has a clear right to a custody hearing by an IJ under 8 U.S.C. § 1226(a)(2). Respondents are detaining Mr. Echevarria-Hernandez in direct violation of this statute which authorizes the IJ to grant release on bond.

71. The statute cannot be clearer and requires that Mr. Echevarria-Hernandez be provided with the opportunity to present his custody redetermination case before the IJ. While the BIA reached the opposite conclusion in *Yajure Hurtado*, this interpretation is erroneous and even if it were plausible, it is not entitled to *Chevron* deference pursuant to the Supreme Court's decision in *Loper Bright Enterprises v. Raimondo.* 603 U.S. 369, 369 (2024) (overruling *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984)).

72. Moreover, in *Monteon-Camargo v. Barr*, the Fifth Circuit found that where the BIA announces a "new rule of general applicability" which "drastically change[s] the landscape,"

retroactive application would "contravene basic presumptions about our legislative system" and should in that case be disfavored unless the government can demonstrate that the advantages of retroactive application outweigh these grave disadvantages. 918 F.3d 423, 430-431 (2019) (quoting *Matter of Diaz-Lizarraga*, 26 I&N Dec. 847, 849, 852 (BIA 2016)).

73. Applying *Yajure Hurtado* to individuals like Mr. Echevarria-Hernandez, who entered the United States without inspection years before the BIA's decision, is impermissibly retroactive. The BIA's decision contradicts decades of statutory practice and administrative precedent, under which such individuals were detained under § 1226(a) and entitled to a bond hearing. Retroactively applying *Yajure Hurtado* strips these long-established rights and imposes a new disability on past actions by rendering them ineligible for bond, contrary to settled expectations. *See Landgraf v. Usi Film Prods.*, 511 U.S. 244, 265 (1994) ("As Justice Scalia has demonstrated … [e]lementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly; settled expectations should not be lightly disrupted.").

COUNT II – *Accardi* Violation

Violation of the Bond Regulations

74. Mr. Echevarria-Hernandez incorporates by reference the allegations of fact set forth in preceding paragraphs.

75. Government agencies are required to follow their own regulations. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954); *United States v. Heffner*, 420 F.2d 809, 811 (4th Cir. 1969) ("An agency of the government must scrupulously observe rules, regulations, or procedures which it has established. When it fails to do so, its action cannot stand and courts will strike it down."). A violation of the *Accardi* doctrine may itself constitute a violation of the Fifth

Amendment Due Process Clause, particularly when liberty is at stake. *See, e.g.*, *Sering Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 160 (W.D.N.Y. 2025) (citing *Rombot v. Souza*, 296 F. Supp. 3d 383, 388 (D. Mass. 2017)).

76. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of "Apprehension, Custody, and Detention of Aliens," the agencies explained 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." 62 Fed. Reg. 10312, 10323 (emphasis added). The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.

77. The application of § 1225(b)(2)(A) to Mr. Echevarria-Hernandez unlawfully mandates his continued detention in violation of § 1226(a) and its regulations at 8 C.F.R. §§ 236.1, 1236.1, and 1003.19, which for decades have recognized that noncitizens present without admission are eligible for a bond hearing. *See Jennings*, 583 U.S. at 288–29 (describing § 1226 detention as relating to people "inside the United States" and "present in the country."). Such protection is not a mere regulatory grace but is a baseline Due Process requirement. *See Hernandez-Lara v Lyons*, 10 F. 4th 19, 41 (1st Cir. 2021).

78. The only exception for such noncitizens subject to § 1226(a) is where the noncitizen is subject to mandatory detention under 8 U.S.C. § 1226(c) for certain crimes and certain national security grounds of removability. *See Demore v. Kim*, 538 U.S. 510, 512 (2003). Nonetheless,

pursuant to *Matter of Yajure Hurtado*, EOIR has a policy and practice of applying § 1225(b)(2) to individual like Mr. Echevarria-Hernandez.

79. The application of § 1225(b)(2) to Mr. Echevarria-Hernandez unlawfully mandates his continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

COUNT III – Fifth Amendment Violation

Procedural and Substantive Due Process Violation

80. Mr. Echevarria-Hernandez repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

81. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Mr. Echevarria-Hernandez has a weighty liberty interest as his freedom "from government … detention … lies at the heart of the liberty that [the Fifth Amendment] protects." *Zadvydas*, 533 U.S. at 690.

82. Mr. Echevarria-Hernandez has a fundamental interest in liberty and being free from official restraint. The government's detention of Mr. Echevarria-Hernandez without a bond redetermination hearing to determine whether he is a flight risk or danger to others violates his right to due process.

83. Individuals who have been released from custody gain a protected liberty interest in remaining free from custody, and ICE must show materially changed circumstances to justify redetention. *See, e.g.*, *See Matter of Sugay*, 17 I. & N. at 640; *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *11 (W.D. Tex. Sept. 22, 2025) ("[O]nce released from immigration custody, noncitizens acquire 'a protectable liberty interest in remaining out of custody

on bond."); *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019); *see also Saravia v. Sessions*, 280 F. Supp. 3d 1168 (N.D. Cal. 2017) ("Once a noncitizen has been released, the law prohibits federal agents from rearresting him merely because he is subject to removal proceedings. Rather, the federal agents must be able to present evidence of materially changed circumstances—namely, evidence that the noncitizen is in fact dangerous or has become a flight risk, or is now subject to a final order of removal.").

84. To protect this liberty interest, due process requires notice and a hearing where the noncitizen may challenge the basis for redetention.

85. The Respondents' redetention of Mr. Echevarria-Hernandez three years after his release on his recognizance, without prior notice, any showing of changed circumstances, or a meaningful opportunity to contest his redetention violates the Fifth Amendment's Due Process Clause.

PRAYER FOR RELIEF

For the foregoing reasons, Mr. Echevarria-Hernandez requests that the Respondents be cited to appear and that, upon due consideration, the Court enter an order:

a. Assuming jurisdiction over this matter;

b. Order that Mr. Echevarria-Hernandez shall not be transferred outside the Western District of Texas while this habeas petition is pending;

c. Order Respondents, pursuant to 28 U.S.C. § 2243, to demonstrate within three days why the Mr. Echevarria-Hernandez's writ of habeas corpus should not be granted.

d. Grant a writ of habeas corpus finding that the Mr. Echevarria-Hernandez's detention is unlawful and unconstitutional; or, in the alternative, provide Mr. Echevarria-Hernandez with a bond hearing pursuant to 8 U.S.C. § 1226(a) within seven days;

e. Award Mr. Echevarria-Hernandez reasonable attorney's fees, expenses and costs; and

f. Grant Mr. Echevarria-Hernandez such other and further relief as the Court may deem just and proper.

Respectfully submitted,

/s/ Kathrine M. Russell
Kathrine M. Russell
De Mott, Curtright & Armendariz
TX Bar# 24070538
8023 Vantage Dr, Suite 800
San Antonio Texas 78230
Office (210) 590-1844
Fax (210) 590-1845
Kat.russell@dmcausa.com

/s/ Maria R. Osornio
Maria R. Osornio
Ruvalcaba Hernandez Law Firm
2800 Northwest Loop 410
San Antonio, TX 78230
210-528-0448
maria@rhlegalfirm.com
Counsel for Respondent
*Pro Hac Vice Motion forthcoming

VERIFICATION UNDER 28 U.S.C. § 2242

Acting on behalf of Mr. Echevarria-Hernandez, I verify that the foregoing factual allegations are true and correct as required by 28 U.S.C. § 2242.

/s/ Maria R. Osornio
Maria R. Osornio
Attorney for Mr. Echevarria-Hernandez

December 3, 2025
Date

CERTIFICATE OF SERVICE

I, Maria R. Osornio, hereby certify that on December 3, 2025, a full copy of the foregoing Petition for Writ of Habeas Corpus was served via certified mail to:

Secretary Kristi NOEM
Office of the General Counsel
U.S. Department of Homeland Security
MS 0425
2707 Martin Luther King Jr Ave SE
Washington, DC 20528-0525

U.S. Attorney General, Pamela BONDI
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Acting Director, Todd LYONS
Immigration and Customs Enforcement
500 12th St, SW
Washington, D.C. 20536

Miguel Vergara
ICE ERO, San Antonio Field Office
1777 NE Loop 410, Floor 15
San Antonio, TX 78217

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

Justin Simmons, U.S. Attorney
Western District of Texas
601 NW Loop 410, Suite 600
San Antonio, Texas 78216

/s/ Maria R. Osornio
Maria R. Osornio
Ruvalcaba Hernandez Law Firm
2800 Northwest Loop 410
San Antonio, TX 78230
210-528-0448
maria@rhlegalfirm.com
Counsel for Respondent

December 3, 2025
Date