UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
Eastern Division

FREDDY I. QUINTUNA VELECELA, Petitioner, v. SAMUEL OLSON, Acting Field Office Director, Chicago Field Office, Immigration and Customs Enforcement; PAMELA BONDI, Attorney General of the United States, Respondents.	)	Case No. 25-CV-15313

PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR EMERGENCY INJUNCTIVE RELIEF

The Petitioner, FREDDY I. QUINTUNA VELECELA, by and through his own and proper person and through his attorneys, ERIN C. COBB, of the LAW OFFICES OF KRIEZELMAN BURTON & ASSOCIATES, LLC, petition this Honorable Court to issue a Writ of Habeas Corpus to review his unlawful detention during his pending removal proceedings, in violation of his constitutional and statutory rights.

Introduction

1. Petitioner is presently being detained by U.S. Immigration and Customs Enforcement ("ICE") at the Broadview Processing Center in Broadview, Illinois.
2. Petitioner is a native and citizen of Ecuador and is 48 years old. He has been residing in the United States for almost 30 years. He is employed in HVAC, and was detained while at Home Depot in Cook County, Illinois. Petitioner was granted deferred action by USCIS in 2022 and continues to be in deferred action, which places a person as a lower priority for removal.

3. Petitioner's detention is a substantial deprivation and burden..
4. Petitioner was detained by ICE on the morning of December 17, 2025.
5. His continued detention is an unlawful violation of due process and is in violation of the provisions of the Immigration & Nationality Act.
6. Petitioner respectfully asks this Court to issue a temporary restraining order directing Petitioner's release and enjoining Respondent's continued detention of Petitioner to ensure his due process rights.
7. In the alternative, Petitioner 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.

Jurisdiction and Venue

8. The action arises under the Constitution of the United States, the Immigration and Nationality Act of 1952, as amended ("INA"), 8 U.S.C. § 1101 et seq., and the Administrative Procedure Act ("APA"), 5 U.S.C. § 701 et seq.
9. This Court has habeas corpus jurisdiction pursuant to 28 U.S.C. § 2241, and Article I, section 9, clause 2 of the United States Constitution (the "Suspension Clause"), as Petitioner is presently subject to immediate detention and custody under color of authority of the United States government, and said custody is in violation of the Constitution, law or treaties of the United States.
10. This action is brought to compel the Respondents, officers of the United States, to accord Petitioner the due process of law to which he is entitled under the Fifth and Fourteenth Amendments of the United States Constitution.
11. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgments Act, 28 U.S.C. § 2201 et seq., 28 U.S.C. § 1331 (federal question jurisdiction), 28

U.S.C. § 1361 (mandamus), and the All Writs Act, 28 USC § 1651.

12. Venue is proper in the Northern District of Illinois because Petitioner is presently detained by Respondents at Broadview Processing Center – which is located within the Northern District. 28 U.S.C. § 1391(b), (e)(1).

Parties

13. Petitioner FREDDY I. QUINTUNA VELECELA is a native and citizen of Ecuador. Petitioner is presently detained at Broadview Processing Center located in Broadview, Illinois.

14. Respondent SAMUEL OLSON is being sued in his official capacity only, as the Acting Field Office Director of the Chicago Field Office of ICE. As such, he is charged with the detention and removal of aliens which fall under the jurisdiction of the Chicago Field Office. He is the Department of Homeland Security's designate for all matters concerning the detention and removal of noncitizens within the Chicago Area of Responsibility, which includes the state of Indiana.

15. Respondent PAMELA BONDI is being sued in her official capacity only, as Attorney General of the United States.

Custody

16. Petitioner FREDDY I. QUINTUNA VELECELA is being unlawfully detained by ICE and he is not likely to be removed in the reasonably foreseeable future.

Factual and Procedural Background

17. Petitioner FREDDY I. QUINTUNA VELECELA is a native and citizen of Ecuador. He has been residing in the United States for almost thirty years, most of that time in

the Chicago area.

18. At the time Petitioner entered the United States, he did not have a visa. He entered without inspection. He did not encounter any immigration officials at or near the time of his entry.

19. Petitioner is employed in the trades, currently in HVAC work. He just started a new job last week.

20. Petitioner was previously the victim of an aggravated battery in Chicago. He had been attacked and required 27 stitches. His doctor told him it was a miracle he survived.

21. Because he was the victim of a crime, suffered substantial harm as a result of the crime, and was helpful to the police and prosecutors in their detection, investigation or prosecution of that crime, Petitioner filed an application for U non-immigrant status with USCIS on June 20, 2017. 8 U.S.C. §§ 1101(a)(15)(U), 1184(p)(1).

22. On May 24, 2022, USCIS issued a bona fide determination to Petitioner regarding the application for U status. Exhibit 1; *see generally* USCIS P.M. Vol. 3, Pt. C, Ch. 5, available at https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5 (last accessed Dec. 17, 2025). As a result, USCIS issued deferred action to Petitioner, designating him as low priority for removal.

23. On May 19, 2022, USCIS issued an employment authorization document to Petitioner, designating his category as (c)(14), or deferred action. Exhibit 2.

24. On December 17, 2025, Petitioner reported to work as normal, and went to Home Depot to pick up supplies. Petitioner was arrested and detained by agents of Department of Homeland Security – upon information and belief, agents of Customs and Border Protection.

25. Upon information and belief, Petitioner was then transported to Broadview Processing Center, where he remains.

26. Upon information and belief, removal proceedings will be initiated against Petitioner as soon as ICE completes his processing.

27. Petitioner has two prior arrests. In February, 2000, he was charged with soliciting a prostitute and was sentenced to supervision. In January, 2014, he was charged with no license, which was stricken off.

28. According to 8 U.S.C. § 1184(p)(2) and section 214(p)(2) of the Immigration and Nationality Act, the total number of aliens who may be issued U-1 nonimmigrant visas or granted U-1 nonimmigrant status may not exceed 10,000 in any fiscal year.

29. USCIS is currently issuing U nonimmigrant visas to those who filed petitions in spring, 2017. Petitioner filed his application in June, 2017.

30. On September 6, 2025, the Board of Immigration Appeals ("the Board") released *Matter of Hurtado*, 29 I&N Dec. 216 (BIA 2025), taking the novel position that all noncitizens present in the United States who entered the country without a lawful entry – which would include Petitioner – must be mandatorily detained pursuant to 8 U.S.C. section 1225(b).

31. Immigration Judges are bound by precedential decisions of the Board. Therefore, filing a motion for bond redetermination would be futile, as the immigration judge is required to deny it pursuant to *Matter of Hurtado*.

32. Petitioner remains detained. He remains in detention and separated from his community.

33. Petitioner's continued detention separates him from his community, and inhibits his

removal defense in many ways, including by making it difficult to communicate with witnesses, gather evidence, and afford legal representation, among other related harm.

Legal Framework

Due Process Clause

34. "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).

35. 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.

36. "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). In this case, to determine the due process to be afforded to Petitioner, the 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.

Detention Provisions under the Immigration and Nationality Act

37. The Immigration and Nationality Act is codified at Title 8 of the United States Code, Section 1221 *et seq.*, and controls the United States Government's authority to detain noncitizens during their removal proceedings.

38. 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, it 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. 8 U.S.C. § 1231(a)(2), (6).

39. This 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.[1]

[1] Section 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

40. Following enactment of the IIRIRA, the Executive Office for Immigration Review ("EOIR") 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).

41. For nearly thirty years, the practice of ICE, which operates 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. *Rocha Rosado v. Figueroa*, 2025 WL 2337099, at *9 (D. Arizona August 11, 2025); *see Loper Bright Enter. v. Raimondo*, 603 U.S. 369, 386 (2024) ("[T]he longstanding practice of the government—like any other interpretive aid—can inform [a court's] determination of what the law is."). 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

immigration judge in full. 8 U.S.C. § 1226(a)(2)(A).

42. The legislative history behind § 1226 also demonstrates that it governs noncitizens, like Petitioner, who were deemed inadmissible upon inspection at the border, released into the United States at the border after being placed into removal proceedings, and were present in the United States for a number of years prior to being taken into detention. Before passage of the Immigration Reform and Immigrant Responsibility Act ("IRIRA"), the predecessor statute to § 1226(a) governed deportation proceedings for all noncitizens arrested within the United States, and like § 1226(a), included a provision allowing for discretionary release on bond. *See* 8 U.S.C. § 1252(a)(1) (1994).[2] After passing the IIRIRA, Congress declared the new § 1226(a) "restates the current provisions in [the predecessor statute] regarding the authority of the Attorney General to arrest, detain, and release on bond" a noncitizen "who is not lawfully in the United States." H.R. Rep. No. 104-469, pt. 1, at 229. *See also* H.R. Rep. No. 104-828, at 210. Because noncitizens like Petitioner were entitled to discretionary detention under § 1226(a)'s predecessor statute, and Congress declared the statute's scope unchanged by IIRIRA, the Court should interpret § 1226 to allow for a discretionary release on bond for noncitizens in a situation similar to Petitioner.

43. Yet, the Board 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. *Matter of Hurtado*, 29 I&N Dec. 216 (BIA

[2] See 8 U.S.C. § 1252(a)(1) (1994) ("Pending a determination of deportability...any [noncitizen]...may, upon warrant of the Attorney General, be arrested and taken into custody."); *Hose v. Immigration & Naturalization Serv.*, 180 F.3d 992, 994 (9th Cir. 1999)(noting a "deportation hearing" was the "usual means" of proceeding against an alien physically in the United States).

2025).

44. As a result, the Board has demanded that judges now ignore particularities that have been historically relevant in determining whether a noncitizen should 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.

45. 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 in agreement with the core logic of our immigration system." *Martinez v. Hyde*, CV 25-11613-BEM, 2025 WL 2084238 (D. Mass. July 24, 2025) (citing *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018)); *see also Lopez Benitez v. Francis,* No. 25 CIV. 5937 (DEH), 2025 WL 2267803 (S.D.N.Y. Aug. 8, 2025) ("the Court need not reach the outer limits of the scope of the phrase 'seeking admission' in § 1225(b)—it is sufficient here to conclude that it does not reach someone who has been residing in this country for more than two years, and that as someone 'already in the country,' *Jennings*, 583 U.S. at 289, [Petitioner] may be subject to detention ***only*** as a matter of discretion under § 1226(a)") (emphasis added).

46. The government's erroneous interpretation of the INA defies the plain text of 8 U.S.C. § 1226. The government's assertion that Petitioner is detained under § 1225 is meritless. 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 about twenty-five years.

47. The government's position and the Board's recent decision contravenes the plain language of the INA and its regulations and has been consistently rejected by federal courts across the nation, including this one. *See Miguel v. Noem*, 2025 WL 2976480 (N.D. Ill. Oct. 21, 2025); *H.G.V.U. v. Smith*, 2025 WL 2962610 (N.D. Ill. Oct. 20, 2025); *Ochoa Ochoa v. Noem*, No. 2025 WL 2938779 (N.D. Ill. Oct. 16, 2025); *Alejandro v. Olson*, 2025 WL 2896348 (S.D. Ind. Oct. 11, 2025); *B.D.V.S. v. Forestal*, 2025 WL 2855743 (S.D. Ind. Oct. 8, 2025); *Campos Leon v. Forestal*, 2025 WL 2694763 (S.D. Ind. Sept. 22, 2025); *Beltran Barrera v. Tindall, et al*, 3:35-cv-541-RGJ, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Hyppolite v. Noem, et al*, 25-CV-4304 (NRM), 2025 WL 2829511 (E.D. New York Oct. 6, 2025); *Sampiao v. Hyde, et al*, 1:25-cv-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Reynosa Jacinto v. Trump, et al*, 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 (D. Neb. August 19, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Aguilar Maldonado v. Olson, et al*, No. 25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. August 18, 2025); *Mohammed H. v. Trump*, No. 25-cv-1576 (JWB/DTS), 2025 WL 1334847 (D. Minn. May 5, 2025); *Rocha Rosado*, 2025 WL 2337099; *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* 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").

48. An overwhelming majority of Article III courts that have examined how the relevant provisions of the INA apply ... has reached the exact same answer," uniformly finding that detention is subject to the provisions of § 1226(a), not the "mandatory" provisions of § 1225(b) as Respondents claim. *Hyppolite*, 2025 WL 2829511 at *7.

49. Courts do not defer to any agency interpretation of law just because it is ambiguous. *Lopez Bright Enter. v. Raimando*, 603 U.S. 369, 412-413 (2024).

50. This Respondents' 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.

51. The "seeking admission" language "necessarily implies some sort of present tense action." *Alejandro*, 2025 WL 2896348, at *15; *Martinez*, 2025 WL 2084238, at *6; *see also Matter of M- D-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.")

52. 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; *see also Romero v. Hyde*, 25-11631-BEM, 2025 WL 2403827 at *9-10 (D. Mass Aug. 19, 2025).

53. 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 this includes the title. *Yates v. United States*, 574 U.S. 528, 552 (Alito, J., concurring in judgment). 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 added word of "arriving" in the title "indicates that the statute governs 'arriving noncitizens, not those present already." *Beltran Barrera*, 2025 WL 2690565, at *6; *Pizarro Reyes*, 2025 WL 2609425, at *5. This is further supported by the text, which focusses on noncitizens who arrive as "crewmen" and "stowaways." *Id.*; *Alejandro*, 2025 WL 2896348, at *16-17. The government's position requires the Court to ignore critical provisions of the INA.

54. The government's interpretation also renders portions of the newly enacted provisions 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; *see also Beltran Barrera*, 2025 WL 2690565, at *7; *Alejandro*, 2025 WL 2896348, at *17-18.

55. 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.").

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

57. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to Petitioner.

58. Given the Board's precent decision in *Hurtado*, any Motion for Bond Redetermination would be futile. Petitioner has no way to seek relief from the judge's and Board's decision but through a habeas petition in the federal courts.

Claims for Relief

FIRST CAUSE OF ACTION

Violation of the Immigration and Nationality Act

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

60. Petitioner was detained pursuant to authority contained in section 1226. He is not subject mandatory detention pursuant to section 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. The Board wrongfully decided *Matter of Hurtado*, finding all noncitizens, such as Petitioner, are subject to mandatory detention under § 1225(b)(2), and this Court is not bound by the decision.

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

SECOND CAUSE OF ACTION

Violation of the Due Process Clause of the Fifth Amendment of the United States Constitution

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

64. 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.

65. The government's detention of Petitioner 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 finding that Petitioner cannot be safely released back to his community and family.

66. The *Matter of Hurtado* decision wrongly interprets the Immigration and Nationality Act.

67. This Court is not required to give deference to *Matter of Hurtado*. In *Loper Bright*, the Supreme Court was clear that "[c]ourts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority," and indeed "may not defer to an agency interpretation of the law simply because a statute is ambiguous." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412 (2024).

68. Rather, this Court can simply look to the Supreme Court's own words in *Jennings* that held that for decades, § 1225 has applied only to noncitizens "seeking admission into

the country"—i.e., new arrivals, and that this contrasts with § 1226, which applies to noncitizens "already in the country." *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018). By keeping Petitioner detained today, his detention is unconstitutional as applied to him and in violation of his due process rights.

69. For these reasons, Petitioner's detention without an individualized custody determination violates the Due Process Clause of the Fifth Amendment.

70. Petitioner therefore requests immediate release without conditions, given his deferred action status, as already determined by USCIS. In the alternative, Petitioner requests bond hearing within five days, where the burden is on the Government to prove by clear and convincing evidence that the detainee poses a danger or flight risk. *Ochoa Ochoa v. Noem*, 2025 WL 2938779 (N.D. Ill. Oct. 16, 2025); *Lopez-Alvarez v. Ripa*, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025) (ordering a bond hearing within seven days or release); *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025) (same); *Roman v. Noem*, 2025 WL 2710211 (D. Nev. 23, 2025);

Prayer for Relief

WHEREFORE, Petitioner respectfully request that this Honorable Court:

A. Accept jurisdiction over this action;

B. Order the immediate release of Petitioner pending these proceedings;

C. Order Respondents not to transfer Petitioner out of the Northern District of Illinois, or out of the Seventh Circuit, during the pendency of these proceedings to preserve jurisdiction and access to counsel;

D. Declare that Respondents" actions to detain Petitioner violate the Due Process Clause of the Fifth Amendment and violate the Immigration and Nationality Act;

E. Issue a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 and order Respondents to immediately release Petitioner from custody without conditons, or, in the alternative, order Respondents to show cause why this Petition should not be granted within three days; or

F. In the alternative, order a bond hearing within five days;

G. Order that upon Petitioner's release, whether by immediate release or upon conclusion of a bond hearing, Respondents must return Petitioner's driver's license and employment authorization document to him;

H. Award reasonable attorneys' fees and costs for this action; and

I. Grant such further relief as the Court deems just and proper.

Dated: December 17, 2025

Respectfully Submitted,

/s/ Erin C. Cobb

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