

1 **Mitchell H. Shen, Esq. (CBN 297566)**
2 **Law Office of Mitchell H. Shen & Associates**
3 **617 S. Olive St., Ste. 810**
4 **Los Angeles, CA 90014**
5 **Tel (213) 878-0333; Fax (213) 402-2169**
6 **Email: MshenLaw@ gmail.com**
7 **Attorney for Petitioner**

8 **UNITED STATES DISTRICT COURT**
9 **FOR THE WESTERN DISTRICT OF TEXAS**
10 **EL PASO DIVISION**

11 **GILVERTO LEON SALAZAR,**
12 **Petitioner,**

Case No. 3:26-cv-00025

VERIFIED PETITION FOR
WRIT OF HABEAS CORPUS

v.

13 **Warden, El Paso Service Processing Center;**
14 **Mary De Anda-Ybarra, *Field Office Director,***
15 ***U.S. Immigration and Customs Enforcement;***
16 **Todd M. Lyons, *Acting Director,***
17 ***U.S. Immigration and Customs Enforcement;***
18 **Kristi Noem, *Secretary of United States***
19 ***Department of Homeland Security;***
20 **Pam Bondi, *Attorney General of the***
21 ***United States, in their official capacities,***

Expedited Hearing Requested

22 **Respondents.**

INTRODUCTION

23 1. PETITIONER/PLAINTIFF, Gilverto Leon Salazar ("Petitioner" or "Mr. Salazar"), by and
24 through his undersigned counsel, hereby petitions this Honorable Court to issue a writ of
25 habeas corpus to order his immediate release, or alternatively, a bond hearing be held for
26 his release from continued detention in the custody of the United States Department of
27 Homeland Security, Immigration and Customs Enforcement ("DHS-ICE") as his continued
28

1 detention is a violation of due process, Immigration and Nationality Act, and constitutes
2 an unlawful detention.

3 2. He is now unlawfully detained because the Department of Homeland Security (DHS) and
4 the Executive Office of Immigration Review (EOIR) have concluded that Petitioner is
5 subject to mandatory detention Pursuant to 8 U.S.C. §1225(b)(2).
6

7 3. Petitioner was detained on November 19, 2025, and as of the date of his habeas, no
8 charging document has been filed. **Exhibit A: Petitioner's Form I-830.** Counsel for
9 Petitioner confirmed with the court that no Notice to Appear ("NTA") has been filed.
10

11 4. DHS is denying Petitioner's release from immigration custody, consistent with a new DHS
12 ~~policy issued on July 8, 2025, instructing all Immigration and Customs Enforcement (ICE)~~

13 employees to consider anyone inadmissible under § 1182(a)(6)(A)(i)—i.e., those who
14 entered the United States without inspection—to be an "applicant for admission" under 8
15 U.S.C. § 1225(b)(2)(A) and therefore subject to mandatory detention.
16

17 5. Petitioner sought a bond redetermination hearing before an immigration judge (IJ), but on
18 December 10, 2025, the IJ denied the bond request. *See Immigration Judge Bond*
19 **Decision: Exhibit B.** The IJ based this decision on the same legal analysis. Indeed, the
20 DHS policy states it was issued "in coordination with the Department of Justice (DOJ)."
21 The IJ concluded that, notwithstanding Petitioner's 21 years of residing in the United
22 States, he is nevertheless an "applicant for admission" who is "seeking admission" and
23 subject to mandatory detention under § 1225(b)(2)(A).
24

25 6. Petitioner's detention violates substantive and procedural due process. Additionally,
26 Petitioner's detention on this basis violates the plain language of the Immigration and
27 Nationality Act. Section 1225(b)(2)(A) does not apply to individuals like Petitioner who
28

1 previously entered the United States and are now residing in the United States. Instead,
2 such individuals are subject to a different statute, § 1226(a), that allows for release on
3 conditional parole or bond. That statute expressly applies to people who, like Petitioner,
4 are charged as inadmissible for having entered the United States without inspection.
5

6 7. Respondents' new legal interpretation is plainly contrary to the statutory framework and
7 contrary to decades of agency practice applying § 1226(a) to people like Petitioner.

8 8. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be released due to
9 a violation of due process unless Respondents provide a bond hearing under § 1226(a)
10 within seven days, where the Government bears the burden of proof to show, by "clear and
11 convincing evidence," that Mr. Salazar is either a flight risk or a danger to the community.
12

13 Lopez-Arevelo v. Ripa, No. EP-25-CV-337-KC, 2025 LX 467042, at *35 (W.D. Tex. Sep.
14 21, 2025); Arostegui-Maldonado v. Baltazar, 2025 U.S. Dist. LEXIS 153843, 2025 WL
15 2280357, at *12 (D. Colo. Aug. 8, 2025).
16

17 9. In support of this petition, the Petitioner states by and through counsel as follows:

18 **JURISDICTION**

19 10. This action arises under the Constitution, the Immigration & Nationality Act of 1990, as
20 amended ("INA"), 8 U.S.C. §1101 et seq. This Court has habeas jurisdiction pursuant to
21 28 U.S.C. §2241, Art. 1, §9, Cl. 2 of the United States Constitution (the "Suspension
22 Clause"); and the common law. This Court may also exercise jurisdiction pursuant to 28
23 U.S.C. §1331 and may grant relief pursuant to the Declaratory Judgment Act, 28 U.S.C.
24 §2201 et seq., and the All Writs Act, 28 U.S.C. §1651.
25

26 11. On May 11, 2005, Congress passed the REAL ID Act of 2005, Pub. L. No. 109-13, 119
27 Stat. 231. The REAL ID Act divested federal district courts of jurisdiction to review final
28

1 orders of deportation, exclusion, and/or removal. However, federal district courts still
2 retain jurisdiction over the detention of aliens through habeas corpus.

3 VENUE

4 12. Venue lies in the United States District Court for the Western District of Texas, the judicial
5 district of confinement, as the petitioner is physically being held in custody at the El Paso
6 Camp East Montana, 6920 Digital Rd., El Paso, TX 79936. This is in accordance with the
7 decision of the United States Supreme Court in Rumsfeld v. Padilla, 124 S.Ct. 2711, 2725
8 (2004) ("Whenever a §2241 habeas petitioner seeks to challenge his present physical
9 custody within the United States, he should name his warden as respondent and file the
10 petition in the district of confinement").
11

12 REQUIREMENTS OF 28 U.S.C. § 2243

13 13. The Court must grant the petition for writ of habeas corpus or issue an order to show cause
14 (OSC) to the respondents "forthwith," unless the petitioner is not entitled to relief. 28
15 U.S.C. § 2243. If an order to show cause is issued, the Court must require respondents to
16 file a return "within *three days* unless for good cause additional time, not exceeding twenty
17 days, is allowed." *Id.* (emphasis added).
18

19 14. Courts have long recognized the significance of the habeas statute in protecting individuals
20 from unlawful detention. The Great Writ has been referred to as "perhaps the most
21 important writ known to the constitutional law of England, affording as it does a *swift* and
22 imperative remedy in all cases of illegal restraint or confinement." Fay v. Noia, 372 U.S.
23 391, 400 (1963) (emphasis added).
24
25

26 PARTIES

1 15. Petitioner, Gilverto Leon Salazar, is a native and citizen of Mexico who has been held in
2 continuing detention by DHS-ICE since November 19, 2025. He is currently detained at
3 the El Paso Camp East Montana, in El Paso, TX.

4 16. Warden of the El Paso Camp East Montana Center is sued in their official capacity as the
5 Warden of the El Paso Camp East Montana in El Paso, TX. The warden has chief executive
6 authority over the administration of the El Paso Camp East Montana in El Paso, TX. In this
7 capacity, they have direct responsibility over the confinement of Gilverto Leon Salazar.
8

9 17. Respondent, Mary De Anda-Ybarra, is sued in her official capacity as the Director of the
10 El Paso Field Office of U.S. Immigration and Customs Enforcement. Respondent Anda-
11 Ybarra is a legal custodian of Petitioner and has the authority to release him.
12

13 18. Respondent, Todd M. Lyons, is sued in his official capacity as the Acting Director of U.S.
14 Immigration and Customs Enforcement. Respondent Lyons is a legal custodian of
15 Petitioner and has the authority to release him.
16

17 19. Respondent, Kristi Noem, is sued in her official capacity as the Secretary of the U.S.
18 Department of Homeland Security (DHS). In this capacity, Respondent Noem is
19 responsible for the implementation and enforcement of the Immigration and Nationality
20 Act, and oversees U.S. Immigration and Customs Enforcement, the component agency
21 responsible for Petitioner's continued detention. Respondent Noem is a legal custodian of
22 Petitioner.
23

24 20. Respondent, Pam Bondi, is sued in her official capacity as the Attorney General of the
25 United States and the senior official of the U.S. Department of Justice (DOJ). In that
26 capacity, she has the authority to adjudicate removal cases and to oversee the Executive
27
28

Office for Immigration Review (EOIR), which administers the immigration courts and the BIA. Respondent Bondi is a legal custodian of Petitioner.

LEGAL FRAMEWORK

A. Petitioner's detention under 8 U.S.C. § 1225(b)(2)(A) is unlawful, and his custody is properly governed by 8 U.S.C. § 1226(a).

21. The Immigration and Nationality Act (INA) prescribes three basic forms of detention for noncitizens in removal proceedings.

22. First, 8 U.S.C. § 1226(a) authorizes the detention of noncitizens in standard non-expedited removal proceedings before an immigration judge (IJ). See 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are 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).

23. 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 referred to under § 1225(b)(2).

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

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

26. 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).

1 27. Following enactment of the IIRIRA, DOJ drafted new regulations explaining that, in
2 general, people who had entered the country without inspection and had been continuously
3 present in the United States for over two years were not considered detained under § 1225,
4 and that they were instead detained under § 1226(a). *See* Inspection and Expedited
5 Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings;
6 Asylum Procedures, 62 Fed. Reg. 10312, 10355 (Mar. 6, 1997).

8 28. Thus, in the decades that followed, most people who entered without inspection—unless
9 they were subject to some other detention authority—received bond hearings. That practice
10 was consistent with many more decades of prior practice, in which noncitizens who were
11 not deemed “arriving” were entitled to a custody hearing before an IJ or other hearing
12

13 officer. *See* 8 U.S.C. § 1252(a) (1994); see also H.R. Rep. No. 104-469, pt. 1, at 229 (1996)
14 (noting that § 1226(a) simply “restates” the detention authority previously found at §
15 1252(a)).

16 29. On July 8, 2025, ICE, “in coordination with” DOJ, announced a new policy that rejected
17 well-established understanding of the statutory framework and reversed decades of
18 practice.

19 30. The new policy, entitled “Interim Guidance Regarding Detention Authority for Applicants
20 for Admission,” claims that all persons who entered the United States without inspection
21 shall now be deemed “applicants for admission” under 8 U.S.C. § 1225, and therefore are
22 subject to the mandatory detention provision under § 1225(b)(2)(A). The policy applies
23 regardless of when a person is apprehended and affects those who have resided in the
24 United States for months, years, and even decades.

25 31. In a September 5, 2025, published decision from the Board of Immigration Appeals (BIA),
26
27
28

1 EOIR adopts this same position. That decision holds that all noncitizens who entered the
2 United States without admission or parole are considered applicants for admission and are
3 ineligible for immigration judge bond hearings. Matter of Yajure Hurtado, 29 I&N Dec.
4 216 (BIA 2025).
5

6 32. This case is binding on Immigration Judges and essentially strips the Immigration Judges
7 of jurisdiction to grant bonds to individuals caught within the U.S. who were not admitted
8 or paroled, like the petitioner.
9

10 33. ICE and EOIR have adopted this position even though federal courts have rejected this
11 exact conclusion. For example, after IJs in the Tacoma, Washington, immigration court
12 ~~stopped providing bond hearings for persons who entered the United States without~~

13 inspection and who have since resided here, the U.S. District Court in the Western District
14 of Washington found that such a reading of the INA is likely unlawful and that § 1226(a),
15 not § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United
16 States. Rodriguez Vazquez v. Bostock, --- F. Supp. 3d --- 2025 WL 1193850 (W.D. Wash.
17 Apr. 24, 2025); *see also* Gomes v. Hyde, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at
18 *8 (D. Mass. July 7, 2025) (granting habeas petition based on same conclusion).
19

20 34. DHS's and DOJ's interpretation defies the INA. As the Rodriguez Vazquez court
21 explained, the plain text of the statutory provisions demonstrates that § 1226(a), not §
22 1225(b), applies to people like Petitioner.
23

24 35. Section 1226(a) applies by default to all persons "pending a decision on whether the
25 [noncitizen] is to be removed from the United States." These removal hearings are held
26 under § 1229a, to "decid[e] the inadmissibility or deportability of a[] [noncitizen]."
27

28 36. The text of § 1226 also explicitly applies to people charged as being inadmissible, including

1 those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)’s
2 reference to such people makes clear that, by default, such people are afforded a bond
3 hearing under subsection (a). As the Rodriguez Vazquez court explained, “[w]hen
4 Congress creates “specific exceptions” to a statute’s applicability, it “proves” that absent
5 those exceptions, the statute generally applies. Rodriguez Vazquez, 2025 WL 1193850, at
6 *12 (*citing* Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co., 559 U.S. 393, 400
7 (2010)).
8

9 37. Section 1226 therefore leaves no doubt that it applies to people who face charges of being
10 inadmissible to the United States, including those who are present without admission or
11 parole.
12

13 38. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently
14 entered the United States. The statute’s entire framework is premised on inspections at the
15 border of people who are “seeking admission” to the United States. 8 U.S.C. §
16 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention
17 scheme applies “at the Nation’s borders and ports of entry, where the Government must
18 determine whether a[] [noncitizen] seeking to enter the country is admissible.” Jennings v.
19 Rodriguez, 583 U.S. 281, 287 (2018).
20

21 39. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to people
22 like Petitioner, who have already entered and were residing in the United States at the time
23 they were apprehended.
24

25 **B. The Constitution Protects Noncitizens Like Petitioner from Arbitrary Arrest and**
26 **Detention.**

27 40. The Constitution establishes due process rights for “all ‘persons’ within the United States,
28 including [noncitizens], whether their presence here is lawful, unlawful, temporary, or

permanent.” Hernandez v. Sessions, 872 F.3d 976, 990 (9th Cir. 2017) (quoting Zadvydas, 533 U.S. at 693 (2001)). These due process rights are both substantive and procedural.

41. First, “[t]he touchstone of due process is protection of the individual against arbitrary action of government,” Wolff v. McDonnell, 418 U.S. 539, 558 (1974), including “the exercise of power without any reasonable justification in the service of a legitimate government objective,” Cnty. of Sacramento v. Lewis, 523 U.S. 833, 846 (1998).

42. These protections extend to noncitizens facing detention, as “[i]n our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.” United States v. Salerno, 481 U.S. 739, 755 (1987). Accordingly, “[f]reedom 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, 533 U.S. at 690.

43. Substantive due process thus requires that all forms of civil detention—including immigration detention—bear a “reasonable relation” to a non-punitive purpose. *See* Jackson v. Indiana, 406 U.S. 715, 738 (1972). The Supreme Court has recognized only two permissible non-punitive purposes for immigration detention: ensuring a noncitizen’s appearance at immigration proceedings and preventing danger to the community. Zadvydas, 533 U.S. at 690–92; *see also* Demore v. Kim, 538 U.S. 510 at 519–20, 527–28, 31 (2003).

44. Second, the procedural component of the Due Process Clause prohibits the government from imposing even permissible physical restraints without adequate procedural safeguards. Generally, “the Constitution requires some kind of a hearing before the State deprives a person of liberty or property.” Zinermon v. Burch, 494 U.S. 113, 127 (1990).

1 45. This is so even in cases where that freedom is lawfully revocable. See Hurd v. D.C., Gov't,
2 864 F.3d at 683 (citing Young v. Harper, 520 U.S. 143, 152 (1997) (re-detention after pre-
3 parole conditional supervision requires pre-deprivation hearing)); Gagnon v. Scarpelli, 411
4 U.S. 778, 782 (1973) (same, in probation context); Morrissey v. Brewer, 408 U.S. 471
5 (1972) (same, in parole context).
6

7 46. After an initial release from custody on conditions, even a person paroled following a
8 conviction for a criminal offense for which they may lawfully have remained incarcerated
9 has a protected liberty interest in that conditional release. Morrissey at 408 U.S. at 482. As
10 the Supreme Court recognized, “[t]he parolee has relied on at least an implicit promise that
11 parole will be revoked only if he fails to live up to the parole conditions.” *Id.* “By whatever
12

13 name, the liberty is valuable and must be seen within the protection of the [Constitution].”
14 *Id.*

15 47. This reasoning applies with equal if not greater force to people found within the U.S. who
16 were never caught at the border, like Petitioner. After all, noncitizens living in the United
17 States, like Petitioner, have a protected liberty interest in their ongoing freedom from
18 confinement. See Zadvydas, 533 U.S. at 690. And, “[g]iven the civil context [of
19 immigration detention], [the] liberty interest [of noncitizens released from custody] is
20 arguably greater than the interest of parolees.” Ortega v. Bonnar, 415 F. Supp. 3d 963, 970
21 (N.D. Cal. 2019).
22
23

24 **STATEMENT OF FACTS**

25 48. Mr. Salazar, a 39-year-old native and citizen of Mexico, entered the United States in 2004,
26 over 21 years ago. He was never apprehended by ICE and has no known criminal arrests
27 or convictions. Given his 21 years of no criminal activity, he does not appear to be a danger.
28

1 49. Having resided in the U.S. for over 21 years, he has extensive family ties, including his
2 U.S. citizen children: [REDACTED] (15 years old) and Brenda Leon (18 years old).

3 He has been gainfully employed and takes care of his children. His strong family ties
4 indicate that he is not a flight risk.
5

6 50. He was encountered by ICE agents on November 19, 2025, in Brooklyn, New York. Since
7 his detention, Petitioner has not been issued any charging document by DHS.

8 51. Petitioner is eligible for Cancellation of Removal before the EOIR, an application available
9 only to individuals who have been in the United States for over 10 years. 8 U.S.C. §1229(6)
10

11 52. On December 10, 2025, the Immigration Judge ("IJ") denied bond, indicating he lacked
12 jurisdiction pursuant to *Matter of Yajure Hurtado*.

13 53. To this date, Mr. Salazar has been detained for over 51 days and will remain detained and
14 separated from his family for months or even years.

15 54. If released, Mr. Salazar would return to his home in Brooklyn, NY, and reside with his
16 family, who have promised to provide him with shelter and to take him to all his future
17 hearing dates.
18

19 EXHAUSTION OF REMEDIES

20 55. There is no statutory exhaustion requirement in 28 U.S.C § 2241. However, the Court may
21 require prudential exhaustion. Courts may waive the prudential exhaustion requirement if
22 "administrative remedies are inadequate or not efficacious, pursuit of administrative
23 remedies would be a futile gesture, irreparable injury will result, or the administrative
24 proceedings would be void." *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004)
25 (quoting *S.E.C. v. G.C. George Sec., Inc.*, 637 F.2d 685, 688 (9th Cir. 1981).
26

27 56. In detention cases, appeals to the Board of Immigration Appeals (BIA) can take months or
28

1 years. Thus, requiring habeas petitioners to appeal to the BIA to prudentially exhaust is
2 not efficient, would cause irreparable harm by continuing to deprive a person of their
3 liberty, and/or would be futile. Petitioner has exhausted his administrative remedies to the
4 extent required by law, and his only remedy is by way of this judicial action.
5

6 57. Despite the fact that Mr. Salazar properly requested a bond redetermination hearing before
7 an Immigration Judge, he was denied a full and fair hearing due to the Board of
8 Immigration Appeals decision in Matter of Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025).
9

10 58. Given an appeal before the BIA, which decided Matter of Yajure Hurtado is futile,
11 requiring waiting for the Petitioner to appeal and waiting for the BIA to decide on the
12 appeal causes irreparable harm to Mr. Salazar.

13 59. Further, no Circuit Court appeal can be made following a decision by the BIA pursuant to
14 8 U.S.C. §1226(e).
15

16 60. Additionally, while Petitioner is detained, his removal proceedings continue in an
17 expedited manner intended to order deportation before release; such that he is no longer
18 eligible for a bond post-removal order.

19 61. Accordingly, any efforts to obtain release from custody from the Department of Homeland
20 Security or from the Board of Immigration Appeals would be futile. Petitioner is currently
21 in removal proceedings, so there is no possibility of removal in the near future. The federal
22 district court retains authority to grant release on bond or any other condition of release.
23

24 **CLAIMS FOR RELIEF**

25 **1. COUNT ONE**

26 **Violation of Fifth Amendment Right to Due Process**
27 **(Substantive Due Process—Detention)**

28 62. Petitioner restates and realleges all paragraphs as if fully set forth here.

63. The Due Process Clause of the Fifth Amendment to the U.S. Constitution prohibits the

1 federal government from depriving any person of “life, liberty, or property, without due
2 process of law.” U.S. Const. Amend. V. Due process protects “all ‘persons’ within the
3 United States, including [non-citizens], whether their presence here is lawful, unlawful,
4 temporary, or permanent.” Zadvydas, 533 U.S. at 693. Immigration detention is
5 constitutionally permissible only when it furthers the government’s legitimate goals of
6 ensuring the noncitizen’s appearance during removal proceedings and preventing danger to
7 the community. *See id.*

9 64. Here, the Petitioner has resided with his U.S. Citizen family in Brooklyn for over 21 years,
10 is gainfully employed, and involved in his community in Brooklyn, NY. He has established
11 a stable home and has not committed any crimes. Additionally, he is eligible for Cancellation

12
13 of Removal pursuant to 8 U.S.C. § 1229b, offering him an opportunity for relief from
14 removal. Having a stable residence, strong family ties, eligibility for relief, and no criminal
15 history, he is neither a flight risk nor a danger to society.

16 65. Moreover, Petitioner’s detention is punitive as it bears no “reasonable relation” to any
17 legitimate government purpose. *Id.* (finding immigration detention is civil and thus
18 ostensibly “nonpunitive in purpose and effect”). Here, the purpose of Petitioner’s detention
19 appears to be “not to facilitate deportation, or to protect against risk of flight or
20 dangerousness, but to incarcerate for other reasons”—namely, to meet newly-imposed
21 DHS quotas and transfer immigration court venue to an expedited docket. Demore, 538
22 U.S. at 532–33 (Kennedy, J., concurring).

23 66. Because Petitioner’s detention has no reasonable relation to him being a flight risk nor a
24 danger to society, his continued confinement violates the Fifth Amendment.
25
26
27
28

2. COUNT TWO

**Violation of Fifth Amendment Right to Due Process
(Procedural Due Process—Detention)**

67. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of this Petition as if fully set forth herein.

68. “[I]n the context of immigration detention, it is well-settled that due process requires adequate procedural protections to ensure that the government’s asserted justification for physical confinement outweighs the individual’s constitutionally protected interest in avoiding physical restraint.” Hernandez, 872 F.3d at 990; Zinerman, 494 U.S. at 127 (Generally, “the Constitution requires some kind of a hearing before the State deprives a person of liberty or property.”). In the immigration context, for such hearings to comply with due process, the

government must bear the burden to demonstrate, by clear and convincing evidence, that the noncitizen poses a flight risk or danger to the community. *See Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011); *see also Martinez v. Clark*, 124 F.4th 775, 785, 786 (9th Cir. 2024).

69. Petitioner’s detention without a pre-deprivation hearing violates due process. Having resided in the U.S. for over 21 years without any criminal history, with no explanation of the justification for his detention, and no opportunity to contest his detention before a neutral adjudicator before being taken into custody, Petitioner has not been provided notice and an opportunity to be heard.

70. Petitioner has a profound personal interest in his liberty. Because he received no procedural protections, the risk of erroneous deprivation is high. And the government has no legitimate interest in detaining Petitioner without a hearing; bond hearings are conducted as a matter of course in immigration proceedings, and nothing in Petitioner’s record suggested that he would abscond or endanger the community before a bond hearing could be carried out. *See, e.g., Jorge*

M.F. v. Wilkinson, 2021 WL 783561, at 3 (N.D. Cal. Mar. 1, 2021); Vargas v. Jennings, 2020 WL 5074312, at 3 (N.D. Cal. Aug. 23, 2020) (“the government’s concern that delay in scheduling a hearing could exacerbate flight risk or danger is unsubstantiated in light of petitioner’s strong family ties and his continued employment during the pandemic as an essential agricultural worker”). As a result, Respondent’s failure to provide an opportunity to prove he is not a flight risk nor a danger violated his due process rights afforded to him by the Constitution.

3. COUNT THEREE

Violation of INA

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

72. 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 the Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

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

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

- (1) Assume jurisdiction over this matter;
- (2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;

- 1 (3) Declare that Petitioner's detention violates the Due Process Clause of the
2 Fifth Amendment; and order his immediate release;
- 3 (4) Alternatively, declare that Petitioner is being detained pursuant to 8 USC § 1226(a)
4 and order a bond hearing to be held within 7 days of this order;
- 5 (5) Issue an Order prohibiting the Respondents from transferring Petitioner from the
6 district without the court's approval;
- 7 (6) Enjoin Respondents from re-detaining Petitioner unless his re-detention is ordered
8 at a custody hearing before a neutral arbiter in which the government bears the
9 burden of proving, by clear and convincing evidence, that Petitioner is a flight risk
10 or danger to the community;
11
-
- 12 (7) Order that Respondents may not place Petitioner in expedited removal proceedings
13 or remove Petitioner except based on a final, executable removal order issued
14 through Section 240 removal proceedings; and
15
- 16 (8) Grant any further relief this Court deems just and proper.
17

18
19 Respectfully submitted,
20 Gilverto Leon Salazar
21 By his attorney:

22 Dated: 1/8/2026

23 Signed: /s/ Mitchell H. Shen
24 MITCHELL H. SHEN, ESQ.
25 Attorney for Petitioner
26 Law Office of Mitchell H. Shen & Associates
27 617 S. Olive St., Ste. 810
28 Los Angeles, CA 90014
Tel. (213) 878-0333; Fax (213) 402-2169
E-mail: MshenLaw @ gmail.com

VERIFICATION OF COMPLAINT

I, Mitchell H. Shen, Esq., state under penalty of perjury that I am the attorney for the Petitioner, Gilverto Leon Salazar, in the foregoing petition, and declare the facts alleged here to be true, except those made on information and belief, which I believe to be true, and further state that the sources of my information and belief are documents and information provided to me by the Petitioner and her associates and family members.

Los Angeles, CA

Signed: /s/ Mitchell H. Shen

Dated: 1/8/2026

MITCHELL H. SHEN, ESQ.

Attorney for Petitioner
Law Office of Mitchell H. Shen & Associates
617 S. Olive St., Ste. 810
Los Angeles, CA 90014
Tel. (213) 878-0333; Fax (213) 402-2169
E-mail: MshenLaw @ gmail.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via Certified Mail / Return Receipt to:

United States Attorney's Office
700 E. San Antonio,
Suite 200
El Paso, Texas 79901;
@: usatxw.civil.immigration.notices@usdoj.gov

Warden, El Paso Camp East Montana
6920 Digital Rd.,
El Paso, TX 79936

Mary De Anda-Ybarra, Field Office Director
~~U.S. Immigration and Customs Enforcement (ICE)~~

999 S Oregon St,
El Paso, TX 79901

Todd M. Lyons, Acting Director
U.S. Immigration and Customs Enforcement (ICE)
500 12th St SW
Washington, DC 20536

Kristi Noem, Secretary
U.S. Department of Homeland Security
Washington, D.C. 20528

Pam Bondi, Attorney General of the United States
950 Pennsylvania Ave., N.W. Room 45-45
Washington, DC 20530-0001; upon the date given below.

Date: 1/8/2026

Signature: /s/ Mitchell H. Shen
MITCHELL H. SHEN, ESQ.
Attorney for Petitioner
Law Office of Mitchell H. Shen & Associates
617 S. Olive St., Ste. 810
Los Angeles, CA 90014
Tel (213) 878-0333; Fax (213) 402-2169
E-mail: MshenLaw @ gmail.com

**PETITION FOR WRIT OF HABEAS CORPUS
GILVERTO LEON SALAZAR**

Exhibit Document

- A. Petitioner's Form I-8301
- B. Immigration Judge's Bond Decision.....2-3