

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

Silvestre Lagos-Bautista,

Petitioner-Plaintiff,

v.

PAM BONDI,

United States Attorney General;

KRISTI LYNN NOEM,

Secretary of the United States

Department of Homeland Security;

TODD M. LYONS,

Director of United States

Immigration and Customs Enforcement;

SYLVESTER ORTEGA

Field Office Director

for Detention and Removal, U.S.

Immigration and Customs Enforcement,

CHARLOTTE COLLINS, Warden,

T. Don Hutto Detention Center

Respondents-Defendants.

Civ. No. 1:26-cv-235

DHS File Number: 221-373-502

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF; PETITION
FOR HABEAS CORPUS UNDER 28
U.S.C. § 2241

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PRELIMINARY STATEMENT

This petition challenges the unlawful detention of Petitioner Silvestre Lagos-Bautista (“Mr. Lagos-Bautista”), a 36-year-old Mexican man who is married and has three United States Citizen children. He has resided in the United States for more than 18 years. He was detained by immigration after a traffic stop in Lockhart, Texas on January 10, 2026. He is currently detained at the T. Don Hutto Detention Center in Taylor, Texas, without access to a bond hearing. *See* Exh. 1, ICE Locator Search Results. The Department of Homeland Security (“DHS”) asserts that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b), despite Congress’s separate detention framework in 8 U.S.C. § 1226(a), which governs interior arrests and provides discretionary bond and immigration-judge (“IJ”) review.

DHS’s novel position—recently endorsed in *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 220 (B.I.A. 2025)—contradicts the Immigration and Nationality Act’s (INA) text, the canon against surplusage, longstanding administrative practice, and Due Process. It effectively erases section 236(a) of the INA, collapses Congress’s dual-track detention scheme, and imposes categorical detention on long-time residents like Mr. Lagos-Bautista who present no danger and are not flight risks.

The human consequences are immediate and severe. Petitioner’s ten-year-old U.S. citizen daughter was a victim of indecency with a child by sexual contact by Petitioner’s adult nephew, and Petitioner and his wife and children have all cooperated with the investigation by the Caldwell County Sheriff’s Office. As a result, Petitioner and his wife will apply for the U-Visa with U.S. Citizenship and Immigration Services (USCIS). His wife is a stay-at-home mom and does not work. She has no work experience and has had little success in finding a job since Mr. Lagos-Bautista’s detention. His wife must take care of their children which impacts her ability to work and pay the bills. Due to her inability to pay rent, electricity and water bills alone, she fears eviction from their home. The Constitution, the INA, and basic principles of fairness do not permit this outcome. Petitioner respectfully requests immediate release or, at minimum, a prompt custody redetermination under § 236(a).

The Petitioner, Silvestre Lagos-Bautista (“Mr. Lagos-Bautista”), respectfully petitions this Honorable Court for a Writ of Habeas Corpus to remedy Petitioner’s unlawful detention and attempted removal from the United States by Respondents.

I. INTRODUCTION

1. This lawsuit seeks the immediate release of Plaintiff-Petitioner Silvestre Lagos-Bautista ("Petitioner"), age 36, from unlawful detention in violation of his constitutional and statutory rights.
2. On or about January 10, 2026, ICE detained Mr. Lagos-Bautista in during a traffic stop in Lockhart, Texas. Mr. Lagos-Bautista was taken into immigration custody. He remains in civil detention in the custody of ICE at T. Don Hutto Detention Center at Taylor, Texas.
3. Mr. Lagos-Bautista has lived in the United States for over 18 years. He is married to Romina Trejo-Chavez ("Romina") and is the father of three children, 6-year-old, 10-year-old, and a 15-year-old. All of his children are United States citizens. Mr. Lagos-Bautista and his family live in Kyle, Texas. He is primary breadwinner for his family. His detention is a substantial deprivation and will cause Petitioner and his family to lose their housing.
4. Petitioner has no criminal convictions. He has not had a criminal charge or arrest before his detention on January 10, 2026.
5. Petitioner's detention became unlawful when Petitioner was not entitled to bond due to the Board of Immigration Appeals published opinion in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) on September 5, 2025, which rendered pursuing a bond futile for non-citizens that entered the United States without inspection. Mr. Lagos-Bautista entered the United States in or about 2008 without inspection and has resided here continuously for over 18 years.

6. Petitioner will file an application for Cancellation of removal for certain non-permanent residents pursuant to 8 U.S.C. § 1229b(b)(1) as he has been physically present in the United States for at least 10 years and been a person of good moral character during that period. Moreover, he has no criminal convictions and has a U.S. wife and children upon whom his removal would cause exceptional and extremely unusual hardship.
7. Petitioner respectfully requests this Court grant the instant petition for a writ of habeas corpus under 28 U.S.C. § 2241 and enjoin Respondent's continued detention of Petitioner to ensure his due process rights and his ability to provide care for his wife and children, who have needs that require Petitioner's presence and support. In the alternative, he respectfully requests the Court order Respondents to show cause why this Petition should not be granted within three days. *See* 28 U.S.C. § 2243. His continued detention is an unlawful violation of due process, incorrect interpretation of immigration law, and is *ultra vires*.

II. JURISDICTION AND VENUE

8. Petitioner is detained in civil immigration custody in T. Don Hutto Detention Center, Taylor, Texas. He has been detained since January 10, 2026.
9. This action arises under the Constitution of the United States and the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et seq.*
10. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and where applicable Article I § 9, cl. 2 of the United States Constitution (Suspension Clause). This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.
11. Venue is proper in the Western District of Texas, Austin Division, under 28 U.S.C. § 1391, because Petitioner is detained in this District and a substantial part of the events giving rise to the claims in this action took place in this District. Venue is also proper

under 28 U.S.C. § 2243 because the immediate custodians of Petitioner reside in this District.

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

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

13. Habeas corpus is “perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). The writ of habeas corpus, challenging illegality of detention, is reduced to a sham if the trial courts do not act within a reasonable time. *Rhueark v. Wade*, 540 F. 2d 1282, 1283 (5th Cir. 1976); *Jones v. Shell*, 572 F.2d 1278, 1280 (8th Cir. 1978). Due to the nature of this proceeding, Petitioner asks this Court to expedite proceedings in this case as necessary and practicable for justice.

IV. PARTIES

14. Petitioner is Mr. Lagos-Bautista. He is 36 years old. He was born in Mexico in 1990 and came to the United States in 2008 without inspection. Prior to his detention, he was living with and supporting his wife and U.S. citizen children in Kyle, Texas. Petitioner is the subject of a removal proceeding based upon the charges of being present in the U.S. without being “admitted or paroled, or [having] arrived in the [U.S.] at any time or place other than as designated by the Attorney General” under INA § 212(a)(6)(A)(i), codified at 8 U.S.C. § 1182(a)(6)(A)(i). He has been in civil immigration detention since January 10, 2026.

15. Respondent Pamela Bondi is named in their official capacity as the U.S. She is responsible for the administration and policy of the immigration courts, which resulted in the denying of this noncitizen's attempt to seek a custody redetermination from the U.S. Department of Justice under 8 C.F.R. §1003.19.
16. Respondent Kristi Noem is named in their official capacity as the Secretary of U.S. Department of Homeland Security. DHS is a department of the executive branch of the U.S. government that is tasked with, among other things, administering and enforcing the federal immigration laws. Secretary Noem is ultimately responsible for the actions of ICE; specifically, they are responsible for the administration of the immigration laws pursuant to Section 103(a) of the INA, 8 U.S.C. § 1103(a). Secretary Noem is legally responsible for the Office of the Principle Legal Advisor of ICE, and in any effort to detain and remove the Petitioner and as such is a legal custodian of Petitioner.
17. Respondent Todd M. Lyons is named in their official capacity as the Acting Director of U.S. Immigration and Customs Enforcement. ICE is the agency within DHS that is specifically responsible for managing all aspects of the immigration enforcement process, including immigration detention. ICE is responsible for apprehension, incarceration, and removal of noncitizens from the United States and as such Acting Director Lyons is a legal custodian of Petitioner.
18. Respondent Sylvestre Ortega is named in their official capacity as the Field Office Director for the San Antonio Field Office of ICE. Director Ortega is responsible for the enforcement of the immigration laws within this district, and for ensuring that ICE officials follow the agency's policies and procedures. Director Ortega is a legal custodian of Petitioner.
19. Respondent Charlotte Collins is named in their official capacity as the warden of the T. Don Hutto Detention Center. They have immediate physical custody of Petitioner

pursuant to an agreement with ICE to detain noncitizens and is a legal custodian of Petitioner.

V. FACTUAL ALLEGATIONS

20. Mr. Lagos-Bautista was detained at a traffic stop on January 10, 2026. ICE has held him without bond. Section 236 of the INA is codified at 8 U.S.C. § 1226 and noncitizens held under its authority have a right to have their custody determination reviewed by an immigration judge.
21. Mr. Lagos-Bautista entered without inspection in 2008. A request for bond is futile under Board of Immigration Appeals published opinion in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Following the interpretation of the aforementioned BIA decision, Immigration Judges do not have jurisdiction to hear the bond request or grant a bond to Petitioner due to being present in the United States without evidence of a lawful admission.
22. It has been widely reported that ICE internally released “interim guidance” regarding a change in their longstanding interpretation of which noncitizens are eligible for release on bond; specifically, ICE is now arguing that only those already admitted to the U.S. (typically requiring lengthy legal efforts with representation of counsel, such as adjusting status to a legal permanent resident or refugee) are eligible to be released from custody during their removal proceedings, and that all others are subject to mandatory detention under 8 U.S.C. § 1225, instead of 8 U.S.C. § 1226, and will remain detained with only extremely limited parole options at ICE’s discretion. Ex. 1, Interim Guidance Regarding Detention Authority for Application for Admission (July 8, 2025). This is a reversal of ICE’s established practice of releasing from custody the majority of noncitizens in removal proceedings, who are found not to pose a flight risk or a danger to the community, on bond.

23. This novel interpretation means that potentially millions noncitizens who entered the United States without inspection (who have not already been formally admitted or paroled) that are contacted by ICE in the interior of the U.S. will be treated as if they were an “arriving alien” at the border and subject to mandatory detention, regardless of how long they have been present in the United States or other equities (such as complete lack of criminal history or U.S. citizen family members including dependent children). ICE will now argue all of these noncitizens are not even entitled to a bond hearing by an IJ on the issue of release from custody during the pendency of removal proceedings.
24. On December 18, 2025, the California Central district court judge Sykes issued her decision in *Maldonado Baustista v. Santacruz* (Case No. 5:25-cv-1873) granting final judgment to named Plaintiffs-Petitioners. The declaratory judgment held that the Bond Denial Class members are detained under 8 U.S.C. § 1226(a) and thus may not be denied consideration for release on bond under § 1225(b)(2)(A). Nonetheless, it appears the Executive Office for Immigration Review and its subagency, the Immigration Court and the Department of Homeland Security (DHS), will blatantly refuse to abide by the declaratory relief as they did under the Court’s partial judgement issued in November. It would be futile to seek a bond from the immigration court in light of their prior refusal to recognize *Maldonado Bautista*.
25. Mr. Lagos-Bautista remains in detention and separated from his family and community. He is experiencing significant and deep emotional and mental trauma from this separation from all those he loves. His wife Romina and his three small children are suffering from depression. His children are attending counseling. His 10-year-old daughter was sexually assaulted by Petitioner’s adult nephew. She suffers from depression, anxiety and PTSD. She requires special care that is very difficult to obtain without Petitioner’s support. Mr. Lagos-Bautista is the primary breadwinner for his family. His detention is a substantial deprivation and will cause Petitioner and his family to lose their housing. They are now at risk of losing their housing, vehicles and medical care without his parental, emotional, and financial support.

26. Mr. Lagos-Bautista's continued detention separates him from his family, prohibits his removal defense in many ways, including by making it difficult to communicate with witnesses, gather evidence, and afford legal representation, among other related harms. He remains detained four hours away round trip from his family, his counsel, and support system and continues to be subjected to the aforementioned harms.

VI. LEGAL FRAMEWORK: Due Process Clause

27. "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).
28. Due Process requires that there be "adequate procedural protections" to ensure that the government's asserted justification for a noncitizen's physical confinement "outweighs the 'individual's constitutionally protected interest in avoiding physical restraint.'" *Id.* at 690 (quoting *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997)). In the immigration context, the Supreme Court only recognizes two purposes for civil detention: preventing flight and mitigating the risks of danger to the community. *Zadvydas*, 533 U.S. at 690; *Demore*, 538 U.S. at 528. A noncitizen may only be detained based on these two justifications if they are otherwise statutorily eligible for bond. *Zadvydas*, 533 U.S. at 690.
29. "The fundamental requirement of due process is the opportunity be heard at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). To determine what process Petitioner is due, this Court should consider (1) the private interest affected by the government action; (2) the risk that current procedures will cause an erroneous deprivation of that private interest, and the extent to which that risk could be reduced by additional safeguards; and (3) the government's interest in

maintaining the current procedures, including the governmental function involved and the fiscal and administrative burdens that the substitute procedural requirement would entail. *Id.* at 335.

30. The procedural protections required in a given situation are evaluated using the *Mathews v. Eldridge* factors:

First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Mathews v. Eldridge, 424 U.S. 319, 335 (1976)); see *Arreola*, 872 F.3d 976, 993 (9th Cir. 2017) (applying *Mathews* factors in immigration detention context).

31. Turning to the first *Mathews* factor, petitioner has a substantial private interest in remaining free from detention. “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). Petitioner resided at liberty within the U.S. for over eighteen years, and during that time, he established extensive ties and life in the community. His detention denies him that freedom.

32. Second, “the risk of an erroneous deprivation [of liberty] is high” where, as here, “[the petitioner] has not received any bond or custody redetermination hearing.” *A.E. v. Andrews*, 2025 WL 1424382, at *5 (E.D. Cal. May 16, 2025). Civil immigration detention, which is “nonpunitive in purpose and effect[,]” is justified when a noncitizen presents a risk of flight or danger to the community. See *Zadvydas*, 533 U.S. at 690; *Padilla v. U.S. Immigr. & Customs Enft*, 704 F. Supp. 3d 1163, 1172 (W.D. Wash. 2023).

33. Petitioner has no criminal convictions. Nonetheless, ICE detained him, and the government has not given any reason why it did so, other than arguing that he is subject to mandatory detention based on the government's decision pursuant to a nation-wide policy involving a novel interpretation of the INA. Petitioner has not been provided any procedural safeguards to determine whether his detention is justified, and his request for a custody redetermination would be denied because the immigration judge will find that he lacks jurisdiction. Given the absence of any procedural safeguards, "the probable value of additional procedural safeguards, i.e., a bond hearing, is high." A.E., 2025 WL 1424382, at *5.

34. Third, the government's interest in detaining petitioner without a hearing is "low." *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019); *Doe v. Noem*, No. 2:25-cv-01103-DAD-AC 2025 WL 691664 at *6 (E.D. Cal. Apr 17, 2025). In immigration court, custody hearings are routine and impose a "minimal" cost. *Doe*, 2025 WL 691664, at *6. The government's interest is further diminished where a person "has consistently appeared for [his] immigration hearings ... and [] does not have a criminal record," *Pinchi v. Noem*, No. 25-CV-05632-RMI (RFL), 2025 WL 1853763 at *2 (N.D. Cal. July 4, 2025), as is the case here.

35. On balance, the Mathews factors show that Petitioner is entitled to a bond hearing, which should have been provided before petitioner was detained. "[T]he root requirement' of the Due Process Clause" is "that an individual be given an opportunity for a hearing before he is deprived of any significant protected interest." *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985) (quoting *Boddie v. Connecticut*, 401 U.S. 371, 379 (1971)); see *Zinerman v. Burch*, 494 U.S. 113, 127 (1990) ("Applying [the Mathews] test, the Court usually has held that the Constitution requires some kind of a hearing before the State deprives a person of liberty "). The Supreme Court has held that Due Process requires a pre-deprivation hearing before those released on parole from a criminal conviction can have their parole finally revoked. See *Morrissey v. Brewer*,

408 U.S. 471, 480–86 (1972). The same is true for those subject to revocation of probation. *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973).

36. Given the absence of “evidence of urgent concerns,” this Court should conclude that “a pre-deprivation hearing is required to satisfy due process.” *Guillermo M. R. v. Kaiser*, No. 25-CV-05436-RFL, 2025 WL 1983677 at *9 (N.D. Cal. July 17, 2025). Numerous district courts have reached a similar conclusion. *See, e.g., id.*; *Garcia v. Andrews*, No. 2:25-CV-01884-TLN-SCR, 2025 WL 1927596 at *5 (E.D. Cal. July 14, 2025); *Pinchi*, 2025 WL 1853763, at *3–4; *Ortega*, 415 F. Supp. 3d at 970; *Singh v. Andrews*, No. 1:25-CV-00801-KES-SKO (HC), 2025 WL 1918679 at *6 (E.D. Cal. July 11, 2025); *Valencia Zapata v. Kaiser*, No. 25-CV-07492-RFL, 2025 WL 2578207 at *1 (N.D. Cal. Sept. 5, 2025).

A. Immigration and Nationality Act

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

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, permits those noncitizens who are not subject to mandatory detention to be released on bond or on their own recognizance.
- 2) **Mandatory Detention of “Criminal” Noncitizens.** 8 U.S.C. § 1226(c) generally requires the mandatory detention of noncitizens who are removable because of certain criminal or terrorist-related activity after they have been released from criminal incarceration.

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

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

39. The instant case concerns the detention provisions at §§ 1226(a) and 1225(b). Both detention provisions, §§ 1226(a) and 1225(b), were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (“IIRIRA”) of 1996, Pub. L. No. 104--208, Div. C, §§ 302-03, 110 Stat. 3009- 546, 3009-582 to 3009-583, 3009-585. Section 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

40. Following enactment of the IIRIRA, the Executive Office for Immigration Review drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225(b) and that they were instead detained under § 1226(a) after an arrest warrant was issued by the Attorney General. *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) (“Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination”) (emphasis added).

41. For nearly thirty years, the practice of the government, specifically ICE and Executive Office for Immigration Review, which operate under DHS, was that most individual noncitizens that were apprehended in the interior of the United States after they had been living in the U.S. for more than two years (as opposed to “arriving” at a point of entry, border crossing, or being apprehended near the border and soon after entering without inspection) received a bond hearing. If determined to not be a danger to the community or a flight risk and, as a result, granted a change in custody status, the individuals were released from detention either on their own recognizance or after paying the bond amount set by the IJ in full. 8 U.S.C. § 1226(a)(2)(A).

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

43. As a result of ICE’s interpretation and practice change, individual noncitizens, including long-time U.S. community members and even those who were previously ordered by ICE to be released upon posting bond by an IJ, continue to be detained by ICE. The circumstances of Petitioner’s detention, his strong community ties and that he poses no danger to the community have not been reviewed because of ICE’s and the BIA’s erroneous interpretation of the statutory scheme.

44. The government's erroneous interpretation of the INA as it relates to noncitizens subject to mandatory detention defies the plain text of 8 U.S.C. § 1226. The government's assertion is laid out in *Matter of Yajure Hurtado*. The government assertion that Petitioner is detained under § 1225—even though he was arrested and detained under § 1226—is meritless. Petitioner came to be in immigration proceedings based on a DHS filing that clearly identified him as subject to detention “pursuant to the authority contained in section 236”; (section 236 of the INA is codified at 8 U.S.C. § 1226.). For decades, § 1225 has applied only to noncitizens “seeking admission into the country”—i.e., new arrivals. *Jennings*, 583 U.S. at 289. This contrasts with § 1226, which applies to noncitizens “already in the country.” *Id.* at 289. Petitioner has been in the United States for over 18 years.
45. This new interpretation is now advanced by the government after decades of consistent use to the contrary. The government's position contravenes the plain language of the INA and its regulations and has been consistently rejected by courts. *See, e.g., Maldonado Bautista v. Noem*, 5:25-CV—01873-SSS-BFM (C.D. Cal. Dec. 18, 2025)(granting final judgment declaring that eligible class members are not subject to mandatory detention and DHS' “Interim Guidance Regarding Detention Authority for Applicants for Admission” not in accordance with the law); *Acosta-Balderas v. Bondi*, 5:25-CV-01629-JKP (W.D. Tex. Dec. 11, 2025) (granting habeas and ordering immediate release); *Cardona-Lozano v. Noem*, 1:25-CV-01784-RP (W.D. Tex Nov. 14, 2025) (granting habeas and ordering bond hearing); *Gonzalez Guerrero v. Noem*, No. 1:25-CV-01334-RP (W.D. Tex. Oct. 27, 2025) (granting preliminary injunction and vacating the BIA decision for bond denial under *Matter of Yajure Hurtado*) (*citing Buenrostro-Mendez*, 2025 WL 2886346, at *3 (“As almost every district court to consider this issue has concluded, ‘the statutory text, the statute's history, Congressional intent, and § 1226(a)'s application for the past three decades’ support finding that § 1226 applies to these circumstances.”) (*citing Pizarro Reyes*, 2025 WL 2609425, at *4); *see also Lopez-Arevelo*, 2025 WL 2691828, at *7 (“In recent weeks, courts across the country have held that this new, expansive interpretation of mandatory detention under

the INA is either incorrect or likely incorrect.”); *Rodriguez*, 2025 WL 2782499, at *1 & n.3 (W.D. Wash. Sep. 30, 2025) (collecting cases and noting that “[e]very district court to address” the statutory question “has concluded that the government’s position belies the statutory text of the INA, canons of statutory interpretation, legislative history, and longstanding agency practice”); *Belsai D.S. v. Bondi*, No. 25-cv-3682, 2025 WL 2802947, at *6 (D. Minn. Oct. 1, 2025) (joining the “chorus” of courts concluding that § 1226 applies); *Hernandez Ramiro v. Bondi*, No. 5:25-CV-01207-XR (W.D. Tex. Sept. 30, 2025) (granting temporary restraining order and stating “ Respondents pointed to the Board’s determination regarding the applicability of § 1225 for support. But ‘the Court does not find that the [Board]’s alleged change in the interpretation of the subject statutes controls the Court’s authority here.’ *Kostak v. Trump*, No. CV 3:25-1093, 2025 WL 2472136, at *2 (W.D. La. Aug. 27, 2025) (citing *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 395 (2024)).

46. Besides, the Board’s interpretation has been subject to criticism upon judicial review. *See Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *7 (W.D. Tex. Sept. 22, 2025) (“In recent weeks, courts across the country have held that this new, expansive interpretation of mandatory detention under the INA is either incorrect or likely incorrect.”); *Martinez*, 2025 WL 2084238; *Gomes v. Hyde*, No. 1:25-cv-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Rodriguez v. Bostock*, No. 3:25-cv-05240-TMC, 2025 WL 1193850 (W.D. Wash. Apr. 24, 2025). See also “More than 100 Judges have ruled against Trump’s admin’s mandatory detention policy” by Kyle Cheney, POLITICO, published October 21, 2025, <https://www.politico.com/news/2025/10/31/trump-administration-mandatory-detention-deportation-00632086>. (“More than 100 federal judges have now ruled at least 200 times that the Trump administration’s effort to systematically detain immigrants facing possible deportation appeared to violate their rights or was just flatly illegal...’The overwhelming majority of district courts across the country, including this Court, that have considered [the Trump administration’s] new statutory interpretation have found it incorrect and unlawful,’ ruled U.S. District Judge Richard Boulware, an appointee of Barack Obama.”). See also *Inspection and Expedited Removal of Aliens*,

62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) (explaining that “[d]espite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination”).

47. This new interpretation is inconsistent with the plain language of the INA. First, the government disregards a key phrase in § 1225. “[I]n the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien *seeking admission* is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a[.]” 8 U.S.C. § 1225(b)(2)(A) (emphasis added). In other words, mandatory detention applies when “the individual is: (1) an ‘applicant for admission’; (2) ‘seeking admission’; and (3) ‘not clearly and beyond a doubt entitled to be admitted.’” *Martinez*, 2025 WL 2084238, at *2.
48. The “seeking admission” language, “necessarily implies some sort of present tense action.” *Martinez*, 2025 WL 2084238, at *6; *see also Matter of MD-C-V-*, 28 I. & N. Dec. 18, 23 (B.I.A. 2020) (“The use of the present progressive tense ‘arriving,’ rather than the past tense ‘arrived,’ implies some temporal or geographic limit”); *U.S. v. Wilson*, 503 U.S. 329, 333 (1992) (“Congress’ use of verb tense is significant in construing statutes.”).
49. 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.
50. When interpreting a statute, “every clause and word . . . should have meaning.” *United States ex rel. Polansky, M.D. v. Exec. Health Res., Inc.*, 599 U.S. 419, 432 (2023) (internal quotation marks and citation omitted). And “the words of the statute must be read in their context and with a view to their place in the overall statutory scheme.”

Gundy v. United States, 588 U.S. 128, 141 (2019) (quotation omitted). The government's position requires the Court to ignore critical provisions of the INA.

51. Second, the government's interpretation would render newly enacted portions of the INA superfluous. "When Congress amends legislation, courts must presume it intends its amendment to have real and substantial effect." *Van Buren v. United States*, 593 U.S. 374, 393 (2021). Congress passed the Laken Riley Act (the "Act") in January 2025. The Act amended several provisions of the INA, including §§ 1225 and 1226. Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025). Relevant here, the Act added a new category of noncitizens subject to mandatory detention under § 1226(c)—those already present in the United States who have also been arrested, charged with, or convicted of certain crimes. 8 U.S.C. § 1226(c)(1)(E); 8 U.S.C. § 1182(a)(6)(A). Of course, under the government's position, these individuals are already subject to mandatory detention under § 1225—rendering the amendment redundant. Likewise, mandatory-detention exceptions under § 1226(c) are meaningful only if there is a default of discretionary detention—and there is, under § 1226(a). *See Rodriguez*, 2025 WL 1193850, at *12.
52. 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.").
53. 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]."

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

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

B. Board of Immigration Appeals

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

C. Maldonado Bautista

57. *Maldonado Bautista v. Santacruz* is a class-action case brought pursuant to the bond statute and regulations and the Administrative Procedure Act, not the federal habeas statute.¹ On November 20, 2025, the district court granted partial summary judgment on behalf of individual plaintiffs in the case and, on November 25, 2025, certified a nationwide class and extended declaratory relief to the certified class. *See Maldonado Bautista v. Santacruz*, No. 5:25-CV- 01873-SSS-BFM, --- F. Supp. 3d ---, 2025 WL 3289861, at *11 (C.D. Cal. Nov. 20, 2025) (order granting partial summary judgment to named Plaintiffs-Petitioners); *Maldonado Bautista*, 2025 WL 3288403, at *9 (order certifying Plaintiffs-Petitioners' proposed nationwide Bond Eligible Class, and adding "[w]hen considering this determination with the MSJ Order, the Court extends the same declaratory relief granted to Petitioners to the

¹ The case originally had individual petitioners who brought habeas claims in their own right—but the class allegations in the case were not pled under the habeas statute. *See* Amended Petition, *Maldonado Bautista v. Noem*, 5:25-cv-01873-SSS-BFM (C.D. Cal. July 28, 2025) (ECF No. 15).

Bond Eligible Class as a whole”). The bond class certified is defined as: 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 or will not be 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. *Maldonado Bautista*, 2025 WL 3288403, at *1. The second prong of this definition is subject to some dispute: class counsel believes that the relevant apprehension is the most *recent* apprehension (which for Petitioner Mr. Rodriguez-Jaimes would mean his apprehension in December 2025), but Respondents have argued that the definition excludes entrants without inspection *initially* apprehended shortly after crossing the border. The declaratory judgment held that the Bond Denial Class members are detained under 8 U.S.C. § 1226(a), and thus may not be denied consideration for release on bond under § 1225(b)(2)(A). *Maldonado Bautista*, 2025 WL 3289861, at *11. Respondents are bound by the judgment in *Maldonado Bautista* as to class members nationwide, as it has the full “force and effect of a final judgment.” 28 U.S.C. § 2201(a).

58. But since that declaratory judgment, Respondents have instructed Immigration Judges *not* to comply with the ruling and not to find entrants without inspection are eligible for bond. They are holding that *Maldonado Bautista* does not apply as it is not an injunction or declaratory relief. This stems from an interpretation of the decision as non-final and improper.

ARGUMENT

59. Petitioner submits that he is a member of the Maldonado Bautista bond class. But he also does not think the questions of his class membership nor even the binding nature of Maldonado Bautista is necessary to the resolution of this case. To the extent the Court disagrees that he is a class member or concurs with Respondents’ erroneous contention that the Maldonado Bautista decision does not in fact order nationwide declaratory relief, he nonetheless urges the Court to follow the reasoning in Maldonado Bautista—

and hundreds of other courts nationwide—as to the authority for his detention. He further notes that the decision in *Maldonado Bautista* does not render the instant petition moot, nor does it determine the question of what the appropriate remedy is. Mr. Lagos-Bautista seeks immediate release because of the statutory and due-process violations he has alleged and which Respondents have not meaningfully disputed.

I. Petitioner Is a Maldonado Bautista Class Member.

60. Petitioner submits that he is a class member because he does not have lawful status in the United States and is currently detained; he was apprehended most recently at a traffic stop at Lockhart, Texas, after living here for over eighteen years and not upon arrival; and he is not detained under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231.4. The order granting class certification in *Maldonado Bautista* further orders that “[w]hen considering this determination with the MSJ Order, the Court extends the same declaratory relief granted to Petitioners to the Bond Eligible Class as a whole.” *Maldonado Bautista*, 2025 WL 3288403, at *9. That is, as a member of the Bond Eligible Class, Petitioner is necessarily detained under 8 U.S.C. § 1226(a). As noted above, the class definition requires that members “were not or will not be apprehended upon arrival” but is not clear as to which apprehension is at issue for detained noncitizens who have been apprehended more than once. Although none of the petitioners in *Maldonado Bautista* were initially apprehended at or near the border, Petitioner believes the most natural reading to be the one he proposes: because the class-action concerns the statutory authority for an individual’s current detention, the relevant apprehension is the one that precipitated the current detention. For Mr. Lagos-Bautista, that apprehension took place on or about January 10, 2026, in Lockhart, Texas and not upon his arrival.

61. Assuming that the Court agrees he is a class member, Mr. Lagos-Bautista is now entitled to the benefit of the district court’s conclusion in *Maldonado Bautista* that his custody is governed by § 1226(a), not 1225(b)(2). But even should the Court conclude he is not a class member, the same conclusion is dictated by the reasoning in the case as well as

in countless others including from this Court. Under that reasoning, Mr. Lagos-Bautista's detention is governed by § 1226(a).

II. Maldonado Bautista Does Not Moot the Instant Petition.

62. Even should the Court agree that Petitioner is a class member of Maldonado Bautista, the class-wide declaratory judgement in that case does not moot his claims. He remains detained, which is undisputedly an injury sufficient to create a case or controversy. *Spencer v. Kemna*, 523 U.S. 1, 7 (1998). Even with Maldonado Bautista in place, Mr. Lagos-Bautista cannot actually obtain a bond hearing absent an order from this court because Respondents have not interpreted the case to bind immigration judges and instead have expressly directed those judges not to hold administrative bond hearings.

III. The Court Should Order Petitioner's Immediate Release Without First Requiring a Bond Hearing.

63. Because Mr. Lagos-Bautista's detention was unlawful *ab initio*, a bond hearing pursuant to 8 U.S.C. § 1226(a) is also not the appropriate or just remedy and no prudential exhaustion requirement should be imposed, irrespective of the remedy ordered in Maldonado Bautista. As a district judge explained last week, "a bond determination by a DHS officer or an immigration judge would not remedy the core constitutional violation at issue here. [Petitioner's] detention was unlawful from its inception because ICE detained her under the wrong statute and without any notice or opportunity to be heard, much less the procedures required under Section 1226(a)." *Rodriguez-Acurio v. Almodovar*, No. 2:25-CV-6065 (NJC), 2025 WL 3314420, at *31 (E.D.N.Y. Nov. 28, 2025). Where "ICE's detention of Petitioner did not comport with the implementing regulations and § 1226(a) [] a bond hearing for a post-deprivation review is wholly inadequate to remedy that unlawful detention." *J.U. v. Maldonado*, No. 25-CV-04836 (OEM), 2025 WL 2772765, at *3 (E.D.N.Y. Sept. 29, 2025). "Such a hearing is no substitute for the requirement that ICE engage in a 'deliberative process prior to, or

contemporaneous with,' the initial decision to strip a person of the freedom that lies at the heart of the Due Process Clause." *Gonzalez v. Joyce*, No. 25 CIV. 8250 (AT), 2025 WL 2961626, at *7 (S.D.N.Y. Oct. 19, 2025) (citing *Lopez v. Sessions*, No. 18 CIV. 4189 (RWS), 2018 WL 2932726, at *15 (S.D.N.Y. June 12, 2018); *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001)). "The suggestion that government agents may sweep up any person they wish without consideration of dangerousness or flight risk, so long as the person will, at some unknown future date, be allowed to ask some other official for his or her release, offends the ordered system of liberty that is the pillar of the Fifth Amendment." *Id.* As Petitioner noted in his petition, many courts have ultimately decided that when Section 1225(b)(2) is applied unlawfully, as it undisputedly was here, release is the most appropriate remedy—without first ordering a bond hearing. *See Montoya v. Bondi*, et al., No. 25-CV-06363 (JMA), 2025 WL 3280762, at *1 (E.D.N.Y. Nov. 25, 2025); *Montoya*, et al., 2025 WL 3280762, at *1; *Hyppolite v. Noem*, No. 25-cv-4304, 2025 WL 2829511 at *16 (E.D.N.Y. Oct. 6, 2025); *J.U.*, 2025 WL 2772765, at *10; *Artiga v. Genalo*, No. 25-CV-5208 (OEM), 2025 WL 2829434, at *9 (E.D.N.Y. Oct. 5, 2025) ("Petitioner's allegations of his detention by ICE raise a substantial constitutional question that cannot be properly adjudicated administratively"). This was true even prior to Respondents' turn away from 30 years of precedent and sudden invocation of Section 1225(b)(2) detention to justify the detention of individuals who entered the U.S. without inspection, as courts had already ordered numerous petitioners released following unlawful re-detention—even though Respondents' agreed in those cases that petitioners' detention was under § 1226(a). *See Valdez v. Joyce*, No. 25 Civ. 4627, 2025 WL 1707737, at *3 (S.D.N.Y. June 18, 2025); *Chipantiza-Sisalema v. Francis*, No. 25-CV-5528, 2025 WL 1927931, at *4 (S.D.N.Y. July 13, 2025). The Court should do the same here and not require administrative exhaustion or a bond hearing.

IV. Administrative Exhaustion Is Not Required.

64. Exhaustion is not required and, as a prudential matter, it is not appropriate, even after *Maldonado Bautista*. "Exhaustion of administrative remedies may not be required when: (1) available remedies provide no genuine opportunity for adequate relief; (2)

irreparable injury may occur without immediate judicial relief; (3) administrative appeal would be futile; and (4) in certain instances a plaintiff has raised a substantial constitutional question.” *Howell v. I.N.S.*, 72 F.3d 288, 291 (2d Cir. 1995) (citations omitted). Here, all four of these exceptions continue to apply.

65. First, despite *Maldonado Bautista*, exhaustion is futile. *See Howell*, 72 F.3d at 291. The *Maldonado Bautista* decision does not enjoin Respondents to provide bond hearings and judges have been instructed not to hold bond hearings pursuant to that decision, since its relief is only declaratory.

66. Next, as many courts have concluded, detention in violation of the right to due process raises a substantial constitutional question and inflicts irreparable harm, two exceptions to the exhaustion requirement. *See, e.g., J.U.*, 2025 WL 2772765, at *4 (“waiver of the exhaustion requirement is warranted because Petitioner is likely to experience irreparable harm if he is unable to seek habeas relief in this Court”); *Artiga*, 2025 WL 2829434, at *4. Should the Court impose an administrative exhaustion requirement, Respondents would prevail in claiming “that § 1226(a) grants practically limitless, unreviewable power to detain individuals for weeks or even months, even if the detention is patently unconstitutional.” *Ozturk v. Trump*, No. 2:25-CV-374, 2025 WL 1145250, at *14–15 (D. Vt. Apr. 18, 2025), amended on other grounds sub nom. *Ozturk v. Hyde*, 136 F.4th 382 (2d Cir. 2025). Finally, a bond hearing would not remedy the violations Petitioner challenges. “In this situation a post-deprivation bond hearing before a DHS officer or even an immigration judge would provide no genuine opportunity to relief because the detention without adequate pre-deprivation procedures has already been carried out.” *Rodriguez-Acurio*, 2025 WL 3314420, at *31.

VII. CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

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

67. Petitioner re-alleges and incorporates by reference the paragraphs above as though fully set forth herein.
68. 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.
69. Mr. Lagos-Bautista's continued detention violates his right to substantive and procedural due process guaranteed by the Fifth Amendment to the U.S. Constitution.
70. The Due Process Clause of the Fifth Amendment to the U.S. Constitution provides that "[n]o person shall...be deprived of life, liberty, or property without due process of law." As a noncitizen who shows well over "two years" physical presence in the United States (he has 10 years), Petitioner is entitled to Due Process Clause protections against deprivation of liberty and property. *See Zadvydas*, 533 U.S. at 693 ("[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent."). Any deprivation of this fundamental liberty interest must be accompanied not only by adequate procedural protections, but also by a "sufficiently strong special justification" to outweigh the significant deprivation of liberty. *Id.* at 690.
71. The Court's ruling in *Zadvydas* is rooted in due process's requirement that there be "adequate procedural protections" to ensure that the government's asserted justification for a noncitizen's physical confinement "outweighs the 'individual's constitutionally protected interest in avoiding physical restraint.'" *Zadvydas*, 533 U.S. at 690 (quoting *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997)). In the immigration context, the Supreme Court only recognizes two purposes for civil detention: preventing flight and mitigating the risks of danger to the community. *Id.*; *Demore v. Kim*, 538 U.S. 510, 523 (2003). The government may not detain a noncitizen based on any other justification.

72. The first justification of preventing flight, however, is “by definition . . . weak or nonexistent where removal seems a remote possibility.” *Zadvydas*, 533 U.S. at 690. Thus, where removal is not reasonably foreseeable and the flight prevention justification for detention accordingly is “no longer practically attainable, detention no longer ‘bears [a] reasonable relation to the purpose for which the individual [was] committed.’” *Id.* (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)). As for the second justification of protecting the community, “preventive detention based on dangerousness” is permitted “only when limited to specially dangerous individuals and subject to strong procedural protections.” *Zadvydas*, 533 U.S. at 690–91.

73. Respondents have deprived Mr. Lagos-Bautista of his liberty interest protected by the Fifth Amendment by detaining him on or about January 10, 2026. Mr. Lagos-Bautista’s detention is improper because he has been deprived of a bond hearing. Like the accused in criminal cases, habeas is proper. *See Moore v. Dempsey*, 261 U.S. 86 (1923); *Johnson v. Zerbst*, 304 U.S. 458 (1938); *Burns v. Wilson*, 346 U.S. 137, 154 (1953).

74. Respondents’ actions in detaining Mr. Lagos-Bautista without any legal justification violate the Fifth Amendment. The government’s detention of Mr. Lagos-Bautista is unjustified. Respondents cannot demonstrate that Petitioner needs to be detained. *See Zadvydas*, 533 U.S. at 690 (finding immigration detention must further the twin goals of (1) ensuring the noncitizen’s appearance during removal proceedings and (2) preventing danger to the community). There is no credible argument that Petitioner cannot be safely released back to his community and family.

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

SECOND CAUSE OF ACTION

Violation of Immigration and Nationality Act

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

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

78. 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.

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

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

THIRD CAUSE OF ACTION

Fifth Amendment – Due Process

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

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

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

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

**FOURTH CAUSE OF ACTION:
ADMINISTRATIVE PROCEDURE ACT**

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

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

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

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

88. The actions by Respondents would improperly alter the substantive rules concerning mandatory custody status without the required notice-and-comment period and would be in violation of the INA and its regulations. These actions by Respondents violate the APA. Under the APA, this Court may hold unlawful and set aside an agency action which is "contrary to constitutional right, power, privilege or immunity." 5 U.S.C. §

706(2)(B). The regulations at 8 C.F.R. §§ 1003.19(h)(1)(B) and 1003.19(h)(2)(B) providing no review of DHS custody decision for arriving aliens in removal proceedings are in violation of substantive and procedural due process as guaranteed by the Fifth Amendment to the United States Constitution. It is ultra vires because it exceeds the authority granted ICE by Congress at 8 U.S.C. § 1226(a). For these reasons, this Honorable Court should order the immediate release of Petitioner.

**FIFTH CAUSE OF ACTION:
STAY OF REMOVAL CLAIM**

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

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

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

**SIXTH CAUSE OF ACTION
SUSPENSION CLAUSE CLAIM**

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

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

94. To invoke the Suspension Clause, a petitioner must satisfy a three-factor test: “(1) the citizenship and status of the detainee and the adequacy of the process through which that status determination was made; (2) the nature of the sites where apprehension and then detention took place; and (3) the practical obstacles inherent in resolving the prisoner’s entitlement to the writ.” *Boumediene v. Bush*, 553 U.S. 723, 766 (2008). Mr. Lagos-Bautista satisfies these three requirements and may invoke the Suspension Clause.
95. First, although Mr. Lagos-Bautista is not a U.S. citizen or resident, he has lived here for 18 years, and he qualifies under the INA to seek Cancellation of Removal, because he has no criminal convictions, he has lived here for ten continuous years, he can show ten years’ good moral character, and he can show his U.S. citizen wife and three U.S. citizen children will suffer exceptional and extremely unusual hardship if he were removed to Mexico. Mr. Lagos-Bautista has significant family connections in the United States, including his three children. All of which establishes a substantial legal relationship with the United States.
96. Mr. Lagos-Bautista satisfies the second factor because he was apprehended by DHS and remains detained in the United States.
97. Finally, there are no serious, practical obstacles to resolving this present matter. This Court is equipped to deciding whether Mr. Lagos-Bautista is entitled to the writ.
98. There is no adequate alternative to a habeas petition. The refusal of the immigration court to grant Mr. Lagos-Bautista the right to show he is mis-classified and that he is not subject to mandatory detention, such that he may return to his family and pursue cancellation, without proper notice or due process, deprives him of his constitutional rights. The BIA cannot adequately and expeditiously review these issues.

**SEVENTH CAUSE OF ACTION:
INJUNCTIVE RELIEF**

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

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

101. Respondents’ actions have caused Petitioner harm that warrants immediate relief. There is substantial likelihood that Mr. Lagos-Bautista will prevail on the merits of his habeas claim as more than 100 federal judges have found the BIA decision in *Matter of Yajure Hurtado* to be an incorrect interpretation of the law. There is substantial threat of irreparable injury if the injunction is not granted. Mr. Lagos-Bautista’s wife is suffering from depression and anxiety. Their daughter also suffers heightened depression and anxiety without her father who she needs to help her deal with her traumatic past. Their children are struggling in school and at home and need counseling due to their depression. Continued detention of Mr. Lagos-Bautista will result in further economic instability, placing them at risk of losing their housing and vehicles. The substantial and irreparable injury that Mr. Lagos-Bautista’s wife and children face substantially outweighs any potential threat to the government. Mr. Lagos-Bautista is established community member. It will not disserve the public interest in granting the preliminary injunction as it is in the public interest to keep families united and supporting each other. Granting a preliminary injunction is proper in this case. *See, e.g., Gonzalez Guerrero v.*

Noem, No. 1:25-CV-01334-RP (W.D. Tex. Oct. 27, 2025) (granting preliminary injunction and vacating the BIA denial of bond jurisdiction under *Matter of Yajure Hurtado*).

VIII. RELIEF SOUGHT

WHEREFORE, Petitioner respectfully requests that this Court:

- (1) Assume jurisdiction over this matter;
- (2) Issue an order directing Respondents to show cause why the writ should not be granted;
- (3) Order Respondents to file with the Court a complete copy of the administrative file from the Department of Justice and the Department of Homeland Security;
- (4) Enjoin ICE from transferring Mr. Lagos-Bautista outside of the Western District of Texas while this matter is pending;
- (5) Grant the writ of habeas corpus ordering Respondents to release Mr. Lagos-Bautista on his own recognizance, parole, or reasonable conditions of supervision, or order the Respondents to conduct a bond hearing under which it correctly applies the statutes and no longer mis-classifies him as subject to mandatory detention;
- (6) Grant any other relief that this Court deems just and proper.

PRAYER FOR EXPEDITED CONSIDERATION

Pursuant to 28 U.S.C. § 2243, Petitioner respectfully requests expedited consideration. Each day of unlawful detention inflicts irreparable harm on Petitioner, his wife and U.S. citizen children, depriving them of their husband and father's care, stability, and support. Prompt judicial intervention is necessary to protect Petitioner's constitutional rights and his family's well-being.

Respectfully submitted on this 30 day of January 2026

/s/ Nicole L. True
Counsel for Petitioner
Nicole L. True
State Bar No. 24046996
Nicole True Law Firm, PC
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Austin, TX 78704
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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Silvestre Lagos-Bautista, and submit this verification on his behalf. I hereby verify that the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 30 day of January 2026.

/s/ Nicole L. True
Counsel for Petitioner
Nicole L. True
State Bar No. 24046996
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CERTIFICATE OF SERVICE

I hereby certify that on January 30, 2026, I caused a true and correct copy of the foregoing Petition for Writ of Habeas Corpus and all accompanying exhibits to be served by certified mail, return receipt requested, on the following:

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

Warden, T Don Hutto Detention Center
Charlotte Collins
P.O. Box 1063
Taylor, Texas 76754

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

Dated this 30 day of January 2026.

/s/ Nicole L. True

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