

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
SEATTLE DIVISION

ALI-HASSEN ALI (A )	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. 2:26-cv-00360
KRISTI NOEM, Secretary, U.S. Department of	)	
Homeland Security; BRUCE SCOTT, Warden,	)	PETITION FOR WRIT OF
Northwest ICE Processing Center; and	)	HABEAS CORPUS
LAURA HERMOSILLO, Acting Field Office	)	
Director, Seattle Field Office, Immigration and	)	
and Customs Enforcement	)	
	)	
Respondents.	)	

PETITION FOR WRIT OF HABEAS CORPUS

The Petitioner, ALI-HASSEN ALI, by and through his own and proper person and through his attorneys, KELLY VOMACKA, of GIBBS HOUSTON PAUW, and ERIN C. COBB, of KRIEZELMAN BURTON & ASSOCIATES, LLC, petition this Honorable Court to issue a Writ of Habeas Corpus to review his unlawful detention in violation of his constitutional and statutory rights.

Introduction

1. Petitioner is presently being detained by U.S. Immigration and Customs Enforcement (“ICE”) at Northwest ICE Processing Center in Tacoma, Washington.
2. Petitioner is a native and citizen of Ethiopia. He has been present in the United States since 2022. He has one U.S. citizen child and his partner is currently pregnant.
3. Petitioner is the primary financial provider and caretaker of his family.

4. Petitioner's detention is a substantial deprivation and burden that puts Petitioner and his family at risk without his support.
5. Petitioner's detention became unlawful on January 20, 2026, when ICE took him into custody during a check-in on his Order of Recognizance. His continued detention is an unlawful violation of due process and an incorrect interpretation of immigration law.
6. Petitioner respectfully asks this Court to issue an order directing Respondents to release Petitioner, given the violation of his due process rights and to ensure his ability to care for his family, who have needs that require Petitioner's presence and support.

Jurisdiction and Venue

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

10. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, 28 U.S.C. § 1331 (federal question jurisdiction), and the All Writs Act, 28 U.S.C. § 1651.
11. Venue is proper in the Western District of Washington because Petitioner is presently detained by Respondents at Northwest ICE Processing Center – which is located within the Western District of Washington. 28 U.S.C. § 1391(b), (e)(1).

Parties

12. Petitioner ALI-HASSEN ALI is a native and citizen of Ethiopia. Petitioner is presently detained at Northwest ICE Processing Center in Tacoma, Washington.
13. Respondent KRISTI NOEM is being sued in her official capacity only. Pursuant to the Homeland Security Act of 2002, Pub. L. 107-296, Defendant NOEM, through her delegates, has broad authority over the operation and enforcement of the immigration laws.
14. Respondent LAURA HERMOSILLO, is being sued in her official capacity only, as the Acting Field Office Director of the Seattle Field Office of ICE. As such, she is charged with the detention and removal of aliens which fall under the jurisdiction of the Seattle Field Office, including Northwest ICE Processing Center.
15. Respondent BRUCE SCOTT is being sued in his official capacity only. As the Warden of Northwest ICE Processing Center, he is the custodian of the jail and all individuals detained therein, where Petitioner is presently being detained. He is, therefore, Petitioner's immediate custodian.

Custody

16. Petitioner ALI-HASSEN ALI is being unlawfully detained by ICE and he is not likely to be removed in the reasonably foreseeable future.

Factual and Procedural Background

17. Petitioner ALI-HASSEN ALI is a native and citizen of Ethiopia. 
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 He entered the United States without inspection on about January 27, 2022.

18. Shortly after his entry, Border Patrol officials encountered Petitioner. He was apprehended and detained.
19. On February 11, 2022, immigration officials released Petitioner on an Order of Release on Recognizance pursuant to 8 U.S.C. section 1226, section 236 of the Immigration and Nationality Act. Exhibit 1.
20. Petitioner was ordered to report to the Immigration & Customs Enforcement Office on March 8, 2022. He did so report. He thereafter reported at regular intervals, as requested and required by ICE. *Id.*
21. Petitioner filed an application for asylum with USCIS on April 13, 2022.
22. Petitioner filed an application for employment authorization with USCIS, which was approved. He later renewed the employment authorization. The renewal was approved on March 12, 2025; it is valid until March 11, 2030. Exhibit 2. The basis of his employment authorization was the pending asylum application.

23. Petitioner was scheduled for an ICE check-in on the Order of Recognizance on February 5, 2026. However, Petitioner was instructed to report early, on January 20, 2026. He did so.
24. On January 20, 2026, Petitioner was detained by ICE.
25. Petitioner filed a motion for bond with the Immigration Court.
26. On January 28, 2026, DHS filed an I-213, Record of Deportable/Inadmissible Alien with the Immigration Court for the bond hearing. Exhibit 3.
27. On the I-213, drafted on January 20, 2026, an immigration official claimed that Petitioner was issued an I-860 Expedited Removal Order on January 28, 2022. The official also claimed that Petitioner was released pursuant to 212(d)(5), 8 U.S.C. § 1182(d)(5), parole. However, no parole document or expedite order was provided to the court.
28. Counsel for Petitioner request a copy of the expedite order, and was advised it is not in the record.
29. Petitioner was not provided 212(d)(5) parole paperwork; he was only provided a Release on Order of Recognizance pursuant to section 1226. Petitioner does not have any paperwork regarding an expedited removal.
30. Upon information and belief, no expedite order or parole document exists in the record.
31. On the I-213, the immigration official claimed Petitioner was taken into custody on January 20, 2026, to await a credible fear interview. No credible fear interview has yet been provided.

32. At the bond hearing on January 29, 2026, the Immigration Judge denied bond, finding he had no jurisdiction because Petitioner was subject to mandatory detention pursuant to 1225. Exhibit 4.
33. On September 5, 2025, the Board of Immigration Appeals (“BIA”) issued the decision, *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). This decision, for the first time in immigration history, proclaimed that any person who crossed the border unlawfully and is later taken into immigration detention is no longer eligible for release on bond.
34. Before September 5, 2025, just 3 months prior, the official position of the BIA was that the Immigration Judge had power to grant release on bond under INA section 236(a) if the person did not have a disqualifying criminal record and the judge was satisfied, after a hearing, that the person was not a danger to the community or a flight risk. *Matter of Akhmedov*, 29 I&N Dec. 166 (BIA 2025).
35. Moreover, ICE had a longstanding practice of treating noncitizens taken into custody while living in the United States as detained pursuant to 8 U.S.C. section 1226(a). *Rocha Rosado v. Figueroa*, 2025 WL 2337099, (D. Arizona August 11, 2025); *see Loper Bright Enter. v. Raimondo*, 603 U.S. 369, 386 (2024) (“[T]he longstanding practice of the government—like any other interpretive aid—can inform [a court’s] determination of what the law is.”). However, this position changed on July 8, 2025, when internal “interim guidance” was released regarding a change in their longstanding interpretation of which noncitizens are eligible for release on bond. ICE’s position is that only those already admitted to the U.S. 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.

36. Petitioner's continued detention, with Immigration Judges ruling nationwide that they do not have jurisdiction over bond hearings for individuals, like Petitioner, separates him from his family, prohibits him from being able to financially provide for his family, and inhibits his removal defense in many ways, including by making it difficult to communicate with witnesses, gathering evidence, and afford legal representation, among other related harm.
37. Since the September 5, 2025 BIA decision, Respondents have increased their enforcement efforts and have detained individuals, like Petitioner, without providing them an opportunity to challenge their detention. As a result, Petitioner is now detained away from his family, counsel, and support system and continues to be subjected to the aforementioned harms.

Legal Framework

Due Process Clause

38. "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).

39. 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.

40. “The fundamental requirement of due process is the opportunity be heard at a meaningful time and in a meaningful manner.” *Mathews v. Eldridge* , 424 U.S. 319, 333 (1976). In this case, to determine the due process to be afforded to Petitioner, the Court should consider (1) the private interest affected by the government action; (2) the risk that current procedures will cause an erroneous deprivation of that private interest, and the extent to which that risk could be reduced by additional safeguards; and (3) the government’s interest in maintaining the current procedures, including the governmental function involved and the fiscal and administrative burdens that the substitute procedural requirement would entail. *Id.* at 335.

Detention Provisions under the Immigration and Nationality Act

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

42. 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).

43. This case concerns the detention provisions at §§ 1226(a) and 1225(b). Both detention provisions, §§ 1226(a) and 1225(b), were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (“IIRIRA”) of 1996, Pub. L. No. 104–208, Div. C, §§ 302–03, 110 Stat. 3009–546, 3009–582 to 3009–583, 3009–585.¹

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

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

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).

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

46. On September 5, 2025, the Board of Immigration Appeals issued its decision in

Matter of Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025) and proclaimed for the first

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

time that any person who crossed the border unlawfully and is later taken into immigration detention is no longer eligible for release on bond.

47. This decision ignores decades of immigration law and precedent by the Supreme Court, as well as the policies and procedures that had been in place before EOIR for more than 30 years.
48. In *Jennings v. Rodriguez*, the Supreme Court analyzed the statutory sections in question, 8 U.S.C. section 1225 and 8 U.S.C. 1226. 583 U.S. at 287. The Court held that section 1225(b) “applies primarily to aliens seeking entry into the United States.” *Id.* at 297. Then, the Court noted that section 1226 “applies to aliens already present in the United States.” *Id.* at 303.
49. The Court specifically found that “Section 1226(a) creates a default rule for those aliens by permitting- but not requiring- the Attorney General to issue warrants for their arrest and detention pending removal proceedings. Section 1226(a) also permits the Attorney General to release those aliens on bond, ‘except as provided in subsection (c) of this section.’” (subsection pertains to aliens who fall into categories involving criminal offenses or terrorist activities). *Id.* at 303. “Federal regulations provide that alien detained under §1226(a) receive bond hearings at the outset of detention.” *Id.* at 306; 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1).
50. The Supreme Court’s analysis in *Jennings* demonstrates the difference for detention of arriving aliens who are seeking entry into the United States under section 1225 and the detention of those who are already present in the United States under section 1226.

51. The BIA's erroneous interpretation of the INA defies the plain text of 8 U.S.C. §§ 1225 and 1226. A key phrase in § 1225 states that "[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; *see also Rodriguez v. Bostock*, 802 F.Supp.3d 1297, 1327-28 (W.D. Wash. 2025).
52. The "seeking admission" language, "necessarily implies some sort of present tense action." *Martinez*, 2025 WL 2084238, at *6; *see also Matter of M- D-C-V-*, 28 I&N Dec. 18, 23 (BIA 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.").
53. Similarly, the text of section 1225(b)(1) plainly indicates that it applies to noncitizens who are "arriving in the United States." "Arriving" means "in the process of reaching a destination," and thus "appear[s] to refer to a process that occurs upon physical entry into the United States, 'not an interminable ... status' that attaches to a noncitizen upon arrival." *M.K. V. Arteta*, 2025 WL 3720779 (S.D.N.Y. Dec. 23, 2025); *see also DeAndrade v. Moniz*, 802 F.Supp.3d 325, 331-33 (D. Mass. 2025); *Mayamu K. v. Bondi*, 2025 WL 3641819 (D. Minn. Oct. 2025).

54. It does not apply to a noncitizen, like Petitioner, who has resided in the United States for over three years prior to his detention in January, 2026.
55. 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.
56. 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).
57. The *Matter of Yajure Hurtado* decision in requires the Court to ignore critical provisions of the INA and it also renders portions of the newly enacted provisions of the INA superfluous. "When Congress amends legislation, courts must presume it intends its amendment to have real and substantial effect." *Van Buren v. United States*, 593 U.S. 374, 393 (2021).
58. 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 v. Bostock*, 802 F.Supp.3d 1297, 1325-26 (W.D. Wash. 2025).

59. 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.”).
60. Section 1226(a) applies by default to all persons “pending a decision on whether the [noncitizen] is to be removed from the United States.” Removal hearings for noncitizens under 1226(a) are held under § 1229a, which “decid[e] the inadmissibility or deportability of a[] [noncitizen].” By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States.
61. Regardless of whether Petitioner was originally detained under 1225(b)(1), as Respondents now claim, or 1226, as the only available documentation demonstrates,

Respondents cannot ignore the language of the law and characterize Petitioner, who has been present in the United States without admission for more than three years, as an “arriving alien” or an “applicant for admission” to support his mandatory detention without a bond hearing.

62. The analysis and holding by the BIA in *Matter of Yajure Hurtado* has also consistently been rejected by district courts across the country over the last several months.
63. This Court is not required, and should not, give deference to the recent Board decision. In *Loper Bright*, the Supreme Court was clear that “[c]ourts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority,” and indeed “may not defer to an agency interpretation of the law simply because a statute is ambiguous.” *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412 (2024). Rather, this Court can simply look to the Supreme Court’s own words in *Jennings* that held that for decades, § 1225 has applied only to noncitizens “seeking admission into the country”—i.e., new arrivals, and that this contrasts with § 1226, which applies to noncitizens “already in the country.” *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018).
64. Petitioner’s continued unlawful detention is also in violation of the declaratory judgment issued on behalf of the certified class in *Maldonado Bautista v. Santacruz*, Case No. 5:25-CV-01873-SSS-BFM, --- F.Supp.3d. ---, 2025 WL 3289861, at *11 (C.D. Cal. Dec. 18, 2025). Court should look to the most recent arrest to determine whether or not a person was apprehended “upon arrival.” The court’s reasoning and language in that decision indicate that the relevant inquiry for determining class membership should be a person’s most recent arrest.

65. The proper remedy is release, as consistently held by courts across the nation.

Beltran Barrera v. Tindall, 2025 WL 2690565, at *7 (W.D. Ky. Sep. 19, 2025); *Roble v. Bondi*, --- F.Supp.3d ---, 2025 WL 2443453, at *5 (D. Minn. Aug. 25, 2025) (ordering petitioner's "release from custody as a remedy for ICE's illegal re-detention"). The proper remedy for unlawful detention is release. *Munaf v. Geren*, 553 U.S. 674, 693 (2008); *see also Espinoza*, 2025 WL 2675785, at *11; *Ramirez Clavijo v. Kaiser*, 2025 WL 2419263, at *6 (N.D. Cal. Aug. 21, 2025); *Munoz Materano v. Arteta*, --- F.Supp.3d ---, 2025 WL 2630826, at *20 (S.D.N.Y. Sept. 12, 2025).

66. 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 [him] under the wrong statute and without any notice or opportunity to be heard, much less the procedures required under section 1226(a). 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-Acuero v. Almovodar*, 2025 WL 3314420 (E.D.N.Y. Nov. 28, 2025); *Barco Mercado v. Francis*, --- F.Supp.3d ---, 2025 WL 3295903 (S.D.N.Y. Nov. 26, 2025); *AMM v. Thompson*, 2025 WL 3296316 (S.D. Tex. Nov. 18, 2025); *Lopez Benitez v. Francis*, 795 F.Supp.3d 475, 484 (S.D.N.Y. 2025).

67. If this court finds immediate release inappropriate, Petitioner requests that this court order bond hearing within five days, where the burden is on the Government to prove by clear and convincing evidence that the detainee poses a danger or flight risk. *Ochoa Ochoa v. Noem*, 2025 WL 2938779 (N.D. Ill. Oct. 16, 2025); *Lopez-Alvarez v. Ripa*, 2025 WL 2691828

(W.D. Tex. Sept. 22, 2025) (ordering a bond hearing within seven day or release); *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025) (same); *Roman v. Noem*, 2025 WL 2710211 (D. Nev. 23, 2025).

Claims for Relief

FIRST CAUSE OF ACTION

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

68. Petitioner repeats and incorporates by reference all allegations above as though set forth fully herein.
69. 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 by detaining him mandatorily, refusing him the opportunity for bond hearing. "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). "Being held in custody by the government at an earlier time does not eliminate one's liberty interest in remaining on release." *G.S. v. Bostock*, 2025 WL 3104274, at *7-8 (W.D. Wash. Oct. 8, 2025), citing *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972); *Young v. Harper*, 520 U.S. 143, 150–53 (1997).
70. The government's detention of Petitioner is unjustified. Respondents have not demonstrated that Petitioner needs to be detained. *See Zadvydas*, 533 U.S. at 690 (finding immigration detention must further the twin goals of (1) ensuring the

noncitizen's appearance during removal proceedings and (2) preventing danger to the community). There is no credible argument that Petitioner cannot be safely released back to his community and family.

71. *Mathews v. Eldridge* requires the court to consider three factors to determine what process is due: (1) "the private interest" at stake; (2) "the risk of an erroneous deprivation" without additional procedures and "the probable value ... of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens imposed by the additional procedures." 424 U.S. at 335.
72. The Constitution typically "requires some kind of a hearing *before* the State deprives a person of liberty or property." *Zinerman v. Burch*, 494 U.S. 113, 127 (1990). Here, petitioner gained a liberty interest in his continued freedom when DHS elected to release him on his own recognizance under section 1226(a), which implied a promise that he would not be re-detained so long as he abided by the terms of his release. *G.S. v. Bostock*, 2025 WL 3104274, at *7-8 (W.D. Wash. Oct. 8, 2025). DHS's decision to release him necessarily involved a decision that he was not a danger to the community nor a flight risk. 8 C.F.R. § 1236.1(c)(8).
73. The risk of deprivation of Petitioner's liberty is high, as DHS has not alleged any changed circumstances which would show he is now a flight risk or danger to the community; instead, the government simply claims he is subject to mandatory detention.
74. The government cannot show a countervailing interest. The government indeed has the

power to seek Petitioner's removal from the United States, and Petitioner has complied with all of the government's requests at each step of the process. The government can continue to seek his removal while he is out of custody. Detention for its own sake is not a legitimate governmental interest. *G.S.*, 2025 WL 3104274, at *9.

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

SECOND CAUSE OF ACTION

Violation of the Immigration and Nationality Act

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

77. Since Petitioner's re-arrest, presumably DHS now argues that he is detained subject to 8 U.S.C. § 1225(b) instead of 8 U.S.C. § 1226.

78. The mandatory detention provision at 8 U.S.C. § 1225(b) 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 § 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).

80. The unlawful application of § 1225 to Petitioner violates the INA.

Prayer for Relief

WHEREFORE, Petitioner respectfully request that this Honorable Court:

- A. Accept jurisdiction over this action;
- B. Order the immediate release of Petitioner pending these proceedings;
- C. Declare that Respondents' actions to detain Petitioner violate the Due Process Clause of the Fifth Amendment and violates the Immigration and Nationality Act;
- D. Declare Petitioner a member of the *Maldonado-Bautista* class;
- E. Issue a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 and order Respondents to immediately release Petitioner from custody, or, in the alternative, schedule a bond hearing within 5 days of the order and accept jurisdiction to issue a bond order;
- F. Award reasonable attorneys' fees and costs for this action; and
- G. Grant such further relief as the Court deems just and proper.

Dated: January 30, 2026

Respectfully Submitted,

/s/ Kelly Vomacka
Kelly Vomacka, Esq.

/s/ Erin C. Cobb
Erin C. Cobb, Esq.

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