UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

MANUEL ANTONIO CREAGH CAPO,

Petitioner,

CASE No.: 5:26-cv-635

v.

BOBBY THOMPSON, Warden
South Texas Detention Center

KRISTI NOEM, Secretary of the
Department of Homeland Security;

PAMELA BONDI, Attorney General of
The United States;

TODD M. LYONS, Acting Director of
U.S. Immigration and Customs Enforcement; and

MIGUEL VERGARA, San Antonio
Field Office Director, U.S. Immigration
and Customs Enforcement.

Respondents.

VERIFIED PETITION FOR A WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241, AND REQUEST FOR ORDER TO SHOW CAUSE

Petitioner, **MANUEL ANTONIO CREAGH CAPO,** by and through undersigned counsel, petitions this Court for a writ of habeas corpus under 28 U.S.C. § 2241 to remedy his unlawful detention in violation of the Constitution and laws of the United States.

INTRODUCTION

Petitioner Manuel Antonio Creagh Capo is a Cuban national with no criminal history who has lived lawfully in San Antonio, Texas, with his wife since 2021. After entering the United States, DHS released him on a Form I-220A, Order of Release on Recognizance, and for more than three years Petitioner complied with all requirements imposed upon him while pursuing multiple lawful avenues of immigration relief.

Petitioner has a pending Form I-589 asylum application, a pending Form I-485 adjustment application under the Cuban Adjustment Act, valid employment authorization through 2029, and a valid Texas driver's license. He worked as a caregiver at a nursing home and built a stable life with his wife, who was granted asylum by the San Antonio Immigration Court on September 3, 2024, with Petitioner listed as her derivative spouse. She has since filed a Form I-730 Refugee/Asylee Relative Petition on his behalf, which—upon approval—will confer derivative asylee status upon him as a matter of law.

Despite this extensive lawful posture, DHS issued a Notice to Appear in October 2025 charging Petitioner as present without admission or parole and, on December 5, 2025, re-detained him when he appeared for a routine ICE check-in in San Antonio. He was then transferred to the South Texas Detention Facility in Pearsall, Texas, where he remains detained.

This Petition follows because Respondents lack statutory and constitutional authority to subject Petitioner to detention under these circumstances. Petitioner was previously released on his own recognizance, has deep family and community ties, is actively pursuing multiple forms of immigration relief, and is the derivative spouse of a granted asylee with a pending I-730 petition that will confer lawful asylee status. His continued detention is not authorized by the Immigration

and Nationality Act and violates the Due Process Clause of the Fifth Amendment. Petitioner therefore seeks a writ of habeas corpus ordering his immediate release.

JURISDICTION

1. This action arises under the United States Constitution, 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.*

2. This Court has subject matter jurisdiction over this Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 (habeas corpus authority); Article I, Section 9, Clause 2 of the United States Constitution (Suspension Clause), 28 U.S.C. § 1331 (federal question); and the Fifth Amendment to the United States Constitution (Due Process Clause of the U.S. Constitution).

3. This Court has authority to grant relief under 28 U.S.C. § 2241, the All Writs Act, 28 U.S.C. § 1651, and the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*

4. Federal district courts have jurisdiction to hear habeas claims brought by noncitizens challenging the lawfulness and the constitutionality of their detention where such claims are independent of any final order of removal. *See Demore v. Kim*, 538 U.S. 510, 516–17 (2003); *Zadvydas v. Davis*, 533 U.S. 678 (2001); *Jennings v. Rodriguez*, 583 U.S. 281, 291–95 (2018); *Buenrostro-Mendez v. Bondi,* No. CV H-25-3726, 2025 WL 2886346, at *1 (S.D. Tex. Oct. 7, 2025) (Rosenthal, J).

VENUE

5. Venue is proper in the district of confinement. *Rumsfeld v. Padilla,* 542 U.S. 426, 442 (2004). Petitioner is currently in the custody of ICE at the South Texas Detention Facility located in Pearsall, Texas, which is within the jurisdiction of this District. ***See,* Ex. 1, DHS/ICE Online Detainee Locator information.**

6. Venue is proper in this District under 28 U.S.C. § 1391(e), because Respondents are officers, employees, or agencies of the United States, a substantial part of the events or omissions giving rise to his claims occurred in this district, and no real property is involved in this action.

REQUIREMENTS OF 28 U.S.C. § 2243

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

8. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "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).

PARTIES

9. Petitioner **Manuel Antonio Creagh Capo** is a native and citizen of Cuba. Petitioner is currently in the physical and legal custody of Respondents at the South Texas Detention Facility in Pearsall, Texas.

10. Respondent **Bobby Thompson** is sued in his official capacity as the Warden of the South Texas Detention Facility, where Petitioner is currently detained.

11. Respondent **Kristi Noem** is the Secretary of the United States Department of Homeland Security ("DHS"). In that capacity, she exercises ultimate control and supervisory authority over all components and personnel of DHS, including U.S. Immigration and Customs

Enforcement ("ICE"). She is responsible for the administration and enforcement of the nation's immigration laws pursuant to 8 U.S.C. § 1103(a). Accordingly, she is the Petitioner's ultimate legal custodian, as Petitioner's detention is maintained under DHS authority.

12. Respondent **Pamela Bondi** is the Attorney General of the United States. In that capacity, she administers the Department of Justice ("DOJ"), including the Executive Office for Immigration Review ("EOIR"), the Board of Immigration Appeals ("BIA"), and the Immigration Courts. She is responsible for the administration and enforcement of the nation's immigration laws pursuant to 8 U.S.C. § 1103(g). Accordingly, she is one of Petitioner's legal custodians.

13. Respondent **Todd M. Lyons** is the Acting Director of U.S. Immigration and Customs Enforcement ("ICE"), a component agency within DHS. In that capacity, he exercises authority over ICE operations nationwide, including enforcement, detention, and removal functions. Accordingly, he is one of Petitioner's legal custodians, as he has direct oversight of the agency responsible for Petitioner's custody.

14. Respondent **Miguel Vergara** is the San Antonio Field Office Director for U.S. Immigration and Customs Enforcement ("ICE"), which has jurisdiction over the South Texas Detention Facility in Pearsall, Texas where Petitioner is detained. In that capacity, he exercises day-to-day supervisory authority over custody determinations and the conditions of detention within his jurisdiction. Accordingly, he is a proper Respondent as one of Petitioner's legal custodians.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

15. Petitioner Manuel Antonio Creagh Capo is a native and citizen of Cuba.

16. Petitioner has no criminal history in the United States or anywhere else.

17. Petitioner resides in San Antonio, Texas, with his wife, Maria Isabel Hernandez, Real, an asylee.

18. On or about November 13, 2021, Petitioner and his wife, Maria Isabel Hernandez Real, entered the United States.

19. On November 20, 2021, Petitioner was released from custody with a Form I-220A, Order of Release on Recognizance. ***See,* Exh. 2, Form I-220A.**

20. On November 4, 2022, Petitioner timely filed a Form I-589, Application for Asylum and for Withholding of Removal, with U.S. Citizenship and Immigration Services ("USCIS"). ***See,* Exh. 3, USCIS Form I-797C, Notice of Action, Form I-589 Receipt.** That application remains pending, although it is unclear whether it is still with USCIS or has been transferred to the Immigration Court.

21. On June 15, 2023, Petitioner filed a Form I-485, Application to Register Permanent Residence or Adjust Status, pursuant to the Cuban Adjustment Act, with U.S. Citizenship and Immigration Services ("USCIS"). ***See,* Exh. 4, USCIS Form I-797C, Notice of Action, Form I-485 Receipt.** That application remains pending.

22. On September 3, 2024, the San Antonio Immigration Court granted Petitioner's wife's Form I-589, Application for Asylum and for Withholding of Removal. ***See,* Exh. 5, Automated Case Information.** Petitioner was included as her derivative spouse on her Form I-589.

23. On November 11, 2024, USCIS issued Petitioner an Employment Authorization Document ("EAD") valid through November 10, 2029. ***See,* Exh. 6, EAD card.** Petitioner, a medical professional in Cuba, was employed as a caregiver at a nursing home.

24. On December 12, 2024, the State of Texas issued Petitioner a driver's license valid through November 10,.2029. ***See*, Exh. 7, Texas driver license.**

25. On July 15, 2025, Petitioner's wife filed a Form I-730, Refugee/Asylee Relative Petition, on Petitioner's behalf. ***See*, Exh. 8, USCIS Form I-797C, Notice of Action, Form I-730 Receipt.** Approval of a Form I-730 confers derivate asylee status upon the beneficiary. That application remains pending.

26. On October 29, 2025, DHS issued Notice to Appear ("NTA") charging Petitioner as removable under INA § 212(a)(6)(A)(i), as a noncitizen present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General. ***See*, Exh. 9, Notice of Appearance.**

27. On December 5, 2025, Petitioner reported to a scheduled ICE check-in at the ICE office in San Antonio, Texas and was re-detained.

28. Following his re-detention, Petitioner was transferred from San Antonio, Texas, to the South Texas Detention Facility in Pearsall, Texas, where he remains detained.

29. Petitioner's continued detention has caused significant harm to him and his family.

30. Petitioner remains separated from his wife, family, and community support network. This prolonged separation has caused substantial economic, emotional, and psychological hardship.

31. On September 5, 2025, the Board of Immigration Appeals ("BIA") issued its precedential decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), holding that noncitizens who entered the United States without inspection and are later taken into immigration custody are categorically ineligible for release on bond under INA § 236(a).

32. Until that decision, the BIA's settled position—reflected in its most recent precedential bond decision—was that immigration judges possessed discretionary authority under INA § 236(a) to grant release on bond following an individualized custody hearing, absent a disqualifying criminal history or findings of flight risk or danger. *See Matter of Akhmedov*, 29 I. & N. Dec. 166 (BIA June 30, 2025).

33. For decades ICE likewise treated noncitizens apprehended from within the United States as detained pursuant to 8 U.S.C. § 1226(a), and therefore eligible for individualized bond determinations. *Rocha Rosado v. Figueroa,* No. CV 25-02157, 2025 WL 2337099 (D. Arizona Aug. 11, 2025).

34. That longstanding interpretation abruptly changed on July 8, 2025, when ICE issued internal Interim Guidance reclassifying most noncitizens who entered without inspection as subject to mandatory detention under 8 U.S.C. § 1225 rather than discretionary detention under § 1226(a). Under this guidance, ICE now treats only noncitizens previously admitted to the United States as eligible to request bond, while all others are treated as ineligible for bond subject to continued detention absent discretionary parole.

35. As a direct result of *Matter of Yajure Hurtado* and Respondents' application of that decision, Petitioner is being detained under a categorical no-bond rule that treats him as ineligible for an individualized bond hearing. Petitioner therefore remains detained away from his family, counsel, and community support system, continuing to suffer the harms described above.

36. Petitioner's continued detention is not the result of any individualized determination that he is a danger to the community or a flight risk but instead flows solely from the categorical no-bond rule announced in *Matter of Yajure Hurtado*.

37. This petition followed.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

38. There is no statutory requirement that a noncitizen exhaust administrative remedies before challenging immigration detention through a petition for writ of habeas corpus. Congress imposed an exhaustion requirement only for judicial review of final orders of removal. *See* 8 U.S.C. § 1252(d)(1); *Garza-Garcia v. Moore*, 539 F. Supp. 2d 899, 904 (S.D. Tex. 2007) ("Under the INA, exhaustion of administrative remedies is only required by Congress for appeals on final orders of removal.").

39. The Supreme Court has further recognized that exhaustion is not required where a plaintiff "may suffer irreparable harm if unable to secure immediate judicial consideration of [the] claim." *McCarthy v. Madigan,* 503 U.S. 140, 147 (1992). Prolonged civil detention without access to a bond hearing constitutes ongoing and irreparable deprivation of physical liberty.

40. Even where exhaustion is considered as a prudential matter, it is unnecessary when pursuit of administrative remedies would be futile or where the agency has predetermined the dispositive issue. *McCarthy v. Madigan,* 503 U.S. 144, 147-48 (1992) (holding that an administrative remedy is inadequate when it "lacks institutional competence to resolve the particular type of issue presented, such as the constitutionality of a statute" or where the "challenge is to the adequacy of the agency procedure itself").

41. In this case, exhaustion would be futile, because the Board of Immigration Appeals ("BIA") has issued a binding precedential decision in *Matter of Yajure Hurtado,* 29 I&N Dec. 216 (BIA 2025), holding that immigration judges lack authority to grant bond to noncitizens deemed subject to detention under 8 U.S.C. § 1225(b)(2)(A), regardless of the length of time the noncitizen has resided in the United States. As a result of that decision, immigration judges have indicated that they lack jurisdiction to consider bond and remain bound by *Yajure Hurtado*, notwithstanding

contrary judicial rulings addressing the statutory distinction between §§ 1225 and 1226. Because immigration judges and the BIA are bound by that precedential decision, no administrative process exists through which Petitioner could obtain the relief sought.

LEGAL FRAMEWORK

DUE PROCESS CLAUSE

42. "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)). "The Due Process Clause applies to all persons within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (citation modified). "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 [of the Fifth Amendment] protects." *Id.* at 690.

43. The Due Process Clause requires that the deprivation of Petitioner's liberty must be narrowly tailored to serve a compelling government interest. *See, Reno v. Flores*, 507 U.S. 292, 301-02 (1993) (holding that due process "forbids the government to infringe certain 'fundamental' liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest").

44. In the immigration context, the Supreme Court has recognized only two legitimate 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.

45. Procedural due process requires, at minimum, "the opportunity to be heard at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). In determining what process is due, courts consider: (1) the private interest affected by the government action; (2) the risk of an erroneous deprivation of that interest, and the extent to which that risk could be reduced by additional safeguards; and (3) the government's interest, including the fiscal and administrative burdens that additional procedures would entail. *Id.* at 335.

DETENTION PROVISIONS UNDER THE IMMIGRATION AND NATIONALITY ACT

46. The Immigration and Nationality Act ("INA"), codified at Title 8 of the United States Code, Section 1101 *et seq.*, governs the authority of the United States Government to detain noncitizens during removal proceedings.

47. The INA authorizes the detention of noncitizens under four distinct statutory provisions:

1) **Discretionary Detention. Section 236(a) of the INA, 8 U.S.C. § 1226(a),** generally governs the detention of noncitizens placed in regular, non-expedited removal proceedings and permits the release of noncitizens not subject to mandatory detention on bond or on their own recognizance.

2) **Mandatory Detention of Certain Criminal Noncitizens. Section 236(c) of the INA, 8 U.S.C. § 1226(c),** generally requires the mandatory detention of noncitizens who are removable on the basis of specified criminal or terrorist-related grounds after their release from criminal custody.

3) **Mandatory Detention of "Applicants for Admission". Section 235(b) of the INA, 8 U.S.C. § 1225(b),** generally mandates the detention of certain noncitizen applicants for admission, including noncitizens arriving at a port of entry and those who have not been admitted or paroled into the U.S. and are apprehended shortly after entering the country.

4) **Post-Removal-Order Detention. Section 241(a) of the INA, 8 U.S.C. § 1231(a),** generally requires the detention of noncitizens subject to a final removal order during the 90-day removal period and authorizes continued detention of certain noncitizens beyond that period. *See* 8 U.S.C. § 1231(a)(2),(6).

48. This case concerns the detention provisions at 8 U.S.C. §§ 1225(b) and 1226(a). Both provisions 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]

49. Following IIRIRA's enactment, the Executive Office for Immigration Review ("EOIR") promulgated regulations clarifying that, in general, noncitizens who entered the United States without inspection and were later apprehended from within the country were detained under § 1226(a), not § 1225(b), once a warrant for arrest was issued. See *Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures*, 62 Fed. Reg. 10,312, 10,323 (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.") (emphasis added).

50. The legislative history of § 1226 confirms that Congress intended it to govern the detention of noncitizens apprehended from within the United States, including individuals deemed inadmissible at the border, released into the United States, and later taken into custody after residing in the country for a period of time. Prior to IIRIRA, the predecessor statute governing detention in deportation proceedings - former 8 U.S.C. § 1252(a)(1) (1994)[2] - authorized discretionary detention and release on bond for noncitizens arrested within the United States. Congress expressly stated that § 1226(a) "restates the current provisions" governing the Attorney

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

[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).

General's authority 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 Congress declared the scope of detention authority unchanged, § 1226(a) must be interpreted to preserve discretionary bond eligibility for similarly situated noncitizens.

51. On September 5, 2025, the Board of Immigration Appeals issued its precedential decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), holding that noncitizens who entered the United States without inspection and are later taken into immigration custody are categorically ineligible for release on bond under § 1226(a).

52. That interpretation departs from decades of agency practice, governing regulations, and Supreme Court precedent recognizing that § 1226(a) authorizes discretionary detention and release on bond following an individualized determination of flight risk and danger.

53. In *Jennings v. Rodriguez*, the Supreme Court examined the statutory detention framework set forth in §§ 1225 and 1226. 583 U.S. 281, 287 (2018). The Court explained that § 1225(b) "applies primarily to aliens seeking entry into the United States," *id.* at 297, while § 1226 governs the detention of "aliens already present in the United States," *id.* at 303.

54. The Court further held that § 1226(a) establishes a default rule authorizing—but not requiring—the arrest and detention of such individuals during removal proceedings and expressly permits release on bond, except for the limited categories specified in § 1226(c) (criminal offenses or terrorist activities). *Id.* at 303. Federal regulations implementing § 1226(a) provide that noncitizens detained under that provision are entitled to bond hearings at the outset of detention. *Id.* at 306; *see* 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1).

55. *Jennings* thus confirms a clear statutory distinction between mandatory detention of arriving noncitizens seeking admission under § 1225(b) and discretionary detention of noncitizens already present in the United States under § 1226(a).

56. The BIA's interpretation in *Matter of Yajure Hurtado* is inconsistent with the plain text of § 1225(b)(2)(A), which mandates detention only "[i]n the case of an alien who is an applicant for admission" and who is "seeking admission" and "not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A).

57. The phrase "seeking admission" necessarily denotes a present-tense act, reflecting an ongoing attempt to enter the United States. See *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 limitation"); *accord Lopez Benitez v. Francis,* 2025 WL 2371588, at *6-7 (S.D.N.Y. Aug. 13, 2025); *see also United States v. Wilson*, 503 U.S. 329, 333 (1992) ("Congress' use of verb tense is significant in construing statutes."); *Al Otro Lado v. McAleenan,* 394 F. Supp. 3d 1168, 1200 (S.D. Cal. 2019)(construing "is arriving" in INA § 235(B)(1)(A)(i) and observing that "[t]he use of the present progressive, like use of the present participle, denotes an ongoing process").

58. Accordingly, § 1225 applies to noncitizens currently seeking admission at the border or a point of entry, while § 1226 governs the detention of noncitizens already present in the United States. See *Jennings*, 583 U.S. at 303. The categorical no-bond rule announced in *Matter of Yajure Hurtado* impermissibly collapses this statutory distinction.

59. In 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). Statutory

language must also be read "in [its] context and with a view to [its] place in the overall statutory scheme." *Gundy v. United States*, 588 U.S. 128, 141 (2019).

60. The interpretation adopted in *Matter of Yajure Hurtado* violates these fundamental principles of statutory construction. It requires courts to disregard critical provisions of the INA and renders portions of the detention framework enacted by Congress superfluous. When Congress amends a statute, courts must presume that the amendment was intended to have "real and substantial effect." *Van Buren v. United States*, 593 U.S. 374, 393 (2021).

61. In January 2025, Congress enacted the Laken Riley Act (the "Act"), which amended several provisions of the INA, including §§ 1225 and 1226. *See* Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025). Relevant here, Congress added a new category of noncitizens subject to mandatory detention under § 1226(c): certain individuals already present in the United States who have been arrested for, charged with, or convicted of specified criminal offenses. See 8 U.S.C. § 1226(c)(1)(E). If, as the government contends, all noncitizens who entered without inspection are already subject to mandatory detention under § 1225(b) at any time, this amendment would serve no purpose. Congress's decision to expand § 1226(c) instead confirms that § 1226(a) provides the default rule of discretionary detention. See *Rodriguez v. Bostock*, No. 3:25-CV-05240-TMC, 2025 WL 1193850, at *28-29 (W.D. Wash. Apr. 24, 2025).

62. Moreover, "[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 enacted the Laken Riley Act against decades of consistent agency practice applying § 1226(a) to noncitizens like Petitioner, who are present in the United States but have not been admitted or paroled. See *Rodriguez*, 2025 WL 1193850, at *28-29; *Martinez* v. Hyde, No.

1:25-cv-11613, 2025 WL 2084238, at *4 (D. Mass. July 24, 2025); 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) ("Despite being applicants for admission, [noncitizens] who are present without having been admitted or paroled . . . will be eligible for bond and bond redetermination.").

63. Section 1226(a) applies by default to noncitizens detained "pending a decision on whether the alien is to be removed from the United States." Removal proceedings under § 1226(a) are conducted pursuant to § 1229a, which governs proceedings "deciding the inadmissibility or deportability of an alien." By contrast, § 1225(b) applies to noncitizens who are arriving at a port of entry or who are in the process of seeking admission to the United States.

64. Since the issuance of *Matter of Yajure Hurtado*, district courts across the country have repeatedly rejected the BIA's new interpretation of §§ 1225 and 1226. *See, e.g., Rodriguez v. Lara v. Bondi,* No. SA-25-CA-01581-XR (W.D. Tex. Dec. 16, 2025); *Hernandez Lopez v. Hardin,* No. 2:25-cv-830-KDC-NPM, 2025 WL 3022245 (M.D. Fla. Oct. 29, 2025); *Aguilar Guerra v. Joyce,* 2:25-cv-534-SDN, 2025 WL 2986316 (D. Maine Oct. 23, 2025); *Contreras Maldonado v. Cabezas,* No. 25-cv-13004, 2025 WL 2985256 (D. N.J. Oct. 23, 2025); *Gomez Garcia v. Noem,* No. 5:25-cv-02771-ODW (PDx), 2025 WL 2986672 (C.D. Cal. Oct. 22, 2025); *Loa Caballero v. Baltazar,* No. 1:25-cv-03120-NYW, 2025 WL 2977650 (C. Colo. Oct. 22, 2025); *Ochoa Ochoa v. Noem,* No. 25-CV-10865, 2025 WL 2938779 (N.D. Ill. Oct. 16, 2025); *N.A. v. Larose,* No. 25-cv-2384-RSH-BLM, 2025 WL 2841989 (S.D. Cal. Oct. 7, 2025); *Lopez-Arevalo v. Ripa,* No. EP-25-CV-337-KC, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Sampiao v. Hyde*, 1:25-cv-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Pizarro Reyes v. Raycraft,* No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Alvarez Martinez v. Noem*, et al., 5:25-CV-01007-JKP (W.D. TX Sept. 8, 2025); *Mosqueda v. Noem*, No. 5:25-CV-02304-CAS (BFM), 2025 WL 2591539 (C.D. Cal. Sept. 8, 2025); *Garcia v. Noem,* No. 25-cv-02180-DMS-MM, 2025 WL

2549431 (S.D. Cal. Sept. 3, 2025); *Carmona-Lorenzo v. Trump*, No. 4:25-cv-3172, 2025 WL 2531521 (D. Neb. Sept. 3, 2025); *Fernandez v. Lyons*, No. 8:25-cv-506, 2025 WL 2531539 (D. Neb. Sept. 3, 2025); *Lopez-Campos v. Raycraft,* No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Kostak v. Trump,* No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Leal-Hernandez v. Noem,* No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Ramirez Clavijo v. Kaiser,* No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Samb v. Joyce,* No. 25Civ.6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Romero v. Hyde,* No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Reynosa Jacinto v. Trump*, et al, 4:25-cv-03161-JFB-RCC (D. Neb. August 19, 2025); *Aguilar Maldonado v. Olson*, et al, No. 25-cv-03142 SRNSGE, 2025 2374411 (D. Minn. August 18, 2025); *Arrazola-Gonzalez v. Noem,* No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Mohammed H. v. Trump*, No. 25-cv-1576 (JWB/DTS), 2025 WL 1334847 (D. Minn. May 5, 2025); *Rocha Rosado v, Figueroa*, 2:25-cv-02157, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025): *Martinez v. Hyde*, No. 1:25-cv-11613, 2025 WL 2084238 at *8 (D. Mass. July 24, 2025); *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).

65. This Court is not required—and should not—defer to the BIA's interpretation in *Matter of Yajure Hurtado*. The Supreme Court has made clear that "[c]ourts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority," and "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). Applying that independent judgment, the Court need only follow the Supreme Court's analysis in *Jennings v. Rodriguez*, which held that

§ 1225 applies to noncitizens "seeking admission into the United States," while § 1226 governs detention of noncitizens "already present in the United States." 583 U.S. 281, 289, 303 (2018).

66. This Court retains jurisdiction under 28 U.S.C. § 2241 to determine the statutory authority governing Petitioner's detention and whether that detention is lawful. Challenges to detention without a bond hearing are collateral to removal proceedings and do not seek review of a removal order. See *Jennings v. Rodriguez*, 583 U.S. 281, 293–95 (2018); *Nielsen v. Preap*, 586 U.S. 392, 402 (2019) (recognizing a distinction between an initial detention decision and a decision denying a bond hearing); *see also Rodriguez v. Lara v. Bondi,* No. SA-25-CA-01581-XR, at *2 (W.D. Tex. Dec. 16, 2025); *Romero v. Hyde,* No. 25-11631-BEM, 2025 WL 2403827, at 5 (D. Mass. Aug. 19, 2025) ("[C]hallenging denial of a bond hearing is not the same thing as challenging the initial detention decision."); *Loa Caballero v. Baltazar,* No. 1:25-cv-03120-NYW, 2025 WL 2977650, at *5-6 (D. Colo. Oct. 22, 2025) (rejecting § 1252(b)(9) as a bar to habeas challenge to detention without bond); *Nava Hernandez v. Noem,* No. 1:25-cv-03094-CNS, 2025 WL 2996643, at * 4 (D. Colo. Oct. 24, 2025)(same).

CLAIMS FOR RELIEF

CLAIM ONE

VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT OF THE U.S. CONSTITUTION

67. Petitioner realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein.

68. The Fifth Amendment's Due Process Clause protects all persons within the United States from arbitrary deprivation of liberty, regardless of their immigration status. *Zadvydas*, 533 U.S. at 693; *Mathews v. Diaz*, 426 U.S. 67, 77 (1976). Freedom from physical restraint "lies at the heart of the liberty that the Due Process Clause protects." *Zadvydas*, 533 U.S. at 690.

69. There is no dispute that Respondents have deprived Petitioner of his liberty. Petitioner is detained without any opportunity to request a bond hearing or to obtain an individualized determination of whether his detention is justified.

A. Substantive Due Process

70. Civil immigration detention is constitutional only when it bears a reasonable relationship to a legitimate governmental purpose. *Zadvydas*, 533 U.S. at 690–91; *Jackson v. Indiana*, 406 U.S. 715, 738 (1972); *Brown v. Taylor*, 911 F.3d 235, 241 (5th Cir. 2018). In the immigration context, the Supreme Court has recognized only two legitimate purposes for civil detention: preventing flight and protecting the community from danger. *Zadvydas*, 533 U.S. at 690; *Demore v. Kim*, 538 U.S. 510, 528 (2003).

71. Petitioner's continued detention bears no reasonable relationship to either purpose. Petitioner is categorically denied any bond hearing solely based on *Matter of Yajure Hurtado*, not because of any individualized finding that he poses a flight risk or danger to the community. Detention imposed by categorical rule rather than individualized justification is arbitrary and violates substantive due process.

72. Respondents have made no showing—nor could they—that Petitioner cannot be safely released subject to reasonable conditions. Where detention is not justified by flight risk or dangerousness, continued confinement is unconstitutional. *Zadvydas*, 533 U.S. at 690.

B. Procedural Due Process

73. Procedural due process requires, at minimum, "the opportunity to be heard at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). Whether the procedures provided satisfy due process is determined by balancing: (1) the private

interest affected; (2) the risk of erroneous deprivation under existing procedures and the value of additional safeguards; and (3) the government's interest. *Id.* at 335.

74. The private interest at issue, the right to be free from physical detention, strongly favors Petitioner. Zadvydas, 533 U.S. at 690. ("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 [of the Fifth Amendment] protects.")

75. The risk of erroneous deprivation is extreme where, as here, Petitioner is denied any opportunity to seek a bond hearing or to present evidence regarding flight risk or dangerousness. The value of an individualized bond hearing before an immigration judge is substantial, as it is the only mechanism by which erroneous detention may be prevented.

76. The government's interest does not justify the complete denial of a bond hearing. Providing an individualized custody determination imposes minimal administrative burden and directly serves the government's legitimate interests in ensuring appearance and public safety. By contrast, categorical detention without a hearing wastes governmental resources and forces unnecessary judicial intervention through habeas proceedings.

C. Application of *Matter of Yajure Hurtado*

77. By categorically denying Petitioner the opportunity to request a bond hearing pursuant to *Matter of Yajure Hurtado*, Respondents have eliminated the individualized process required by the Due Process Clause. Detention imposed without any opportunity to be heard, and without any individualized justification, is unconstitutional as applied to Petitioner.

78. Petitioner's continued detention therefore violates both substantive and procedural due process under the Fifth Amendment.

79. Petitioner is entitled to immediate relief in the form of an order ordering his immediate release, or, in the alternative, requiring Respondents to provide a prompt bond hearing before a neutral immigration judge.

80. To satisfy due process, any bond hearing ordered by this Court must place the burden on the government to justify continued detention. *Loa Caballero v. Baltazar,* No. 1:25-cv-03120-NYW, 2025 WL 2977650, at *5-6 (D. Colo. Oct. 22, 2025); *L.G. v. Choate,* 744 F. Supp. 3d 1172, 1185 (D. Colo. 2024); *Diaz-Ceja v. McAleenan,* No. 19-cv-00824-NYW, 2019 WL 2774211, at 12 (D. Colo. July 2, 2019). Where the government seeks to deprive an individual of physical liberty through civil detention, due process requires the government to demonstrate that detention is necessary to serve a legitimate purpose. See *Zadvydas v. Davis,* 533 U.S. 678, 690–91 (2001); *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). Allocating the burden to the government is essential to reduce the risk of erroneous deprivation of liberty and to ensure that detention is not imposed arbitrarily.

CLAIM TWO

VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT

81. Petitioner realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein.

82. The Board of Immigration Appeals exceeded its statutory authority in *Matter of Yajure Hurtado* by reclassifying noncitizens already present in the United States as subject to mandatory detention under 8 U.S.C. § 1225(b). That interpretation contradicts the plain text and structure of the Immigration and Nationality Act and unlawfully strips immigration judges of the discretionary bond authority Congress expressly preserved in 8 U.S.C. § 1226(a).

83. Petitioner challenges the application of § 1225(b)(2) to him, not the statute's facial validity.

84. This Court is not required—and should not—defer to the BIA's interpretation in *Matter of Yajure Hurtado*. The Supreme Court has made clear that "[c]ourts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority," and "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).

85. Petitioner was apprehended from within the United States and is therefore subject to detention, if at all, under 8 U.S.C. § 1226(a). As the Supreme Court has explained, § 1225 applies only to noncitizens "seeking admission into the United States," while § 1226 governs the detention of noncitizens "already present in the United States." *Jennings v. Rodriguez*, 583 U.S. 281, 289, 303 (2018). Under § 1226(a), Congress authorized discretionary detention and expressly permitted release on bond following an individualized custody determination, except in the limited circumstances specified in §§ 1225(b)(1), 1226(c), or 1231.

86. Mandatory detention under § 1225(b)(2) does not apply to noncitizens who previously entered the United States and have been residing in the country prior to being taken into immigration custody. Extending § 1225(b)(2) to such individuals impermissibly expands the statute beyond its text and collapses the distinction Congress drew between arriving noncitizens and those already present in the United States.

87. By holding that noncitizens like Petitioner are categorically subject to mandatory detention under § 1225(b)(2), *Matter of Yajure Hurtado* unlawfully redefines the scope of the detention statutes and eliminates discretionary bond authority that Congress expressly preserved in § 1226(a).

88. Because detention authority is purely a creature of statute, detention imposed without statutory authorization constitutes ultra vires executive action and is unlawful per se.

89. The application of § 1225(b)(2) to Petitioner therefore violates the Immigration and Nationality Act and constitutes ultra vires agency action.

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PRAYER FOR RELIEF

WHEREFORE, Petitioner, Manuel Antonio Creagh Capo, respectfully requests that this Honorable Court grant the following relief.

A. Exercise jurisdiction over this action pursuant to 28 U.S.C. § 2241;

B. Issue an Order to Show Cause pursuant to 28 U.S.C. § 2243, directing Respondents to show cause, within a time set by the Court, why this Petition should not be granted;

C. Enjoin Respondents from removing Petitioner from the United States or transferring him outside this District while this action is pending;

D. Declare that Respondents' continued detention of Petitioner without an opportunity for an individualized bond hearing violates the Due Process Clause of the Fifth Amendment and exceeds the detention authority authorized by the Immigration and Nationality Act;

E. Declare that the application of 8 U.S.C. § 1225(b)(2) to Petitioner is unlawful as applied and constitutes ultra vires agency action;

F. Issue a Writ of Habeas Corpus ordering Respondents to immediately release Petitioner from ICE custody or, in the alternative, order Respondents to provide Petitioner with a prompt individualized bond hearing before a neutral Immigration Judge within a time certain set by this Court;

G. Order that, at any bond hearing conducted pursuant to this Court's Order, the government bears the burden of proving that continued detention is justified by flight risk or danger to the community;

H. Order Respondents, upon Petitioner's release from custody, to promptly return all personal property and identity documents seized in connection with his detention to the extent such

items are in Respondents' possession, custody, or control, including but not limited to his driver's license, employment authorization document, and any other government-issued identification.

I. Award Petitioner reasonable attorneys' fees and costs to the extent permitted by law, including under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412; and

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

Dated: February 2, 2026

Respectfully submitted,

/s/ Veronica Semino
Veronica Semino, Esq.†
FL Bar No.: 70592
SEMINO LAW, P.A.
P.O. Box 944
Fulshear, TX 77441
Tel.: (786) 505-6186
Facsimile: (855) 510-6764
veronica@seminolaw.com

Attorneys for Petitioner
†Admitted in Florida only; working remotely from Texas.

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I submit this verification on Petitioner's behalf pursuant to 28 U.S.C. § 2242. I declare under penalty of perjury that the factual statements made in the foregoing Verified Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge, information, and belief.

Dated: February 2, 2026

Respectfully submitted,

/s/ Veronica Semino
Veronica Semino, Esq.†
FL Bar No.: 70592
SEMINO LAW, P.A.
P.O. Box 944
Fulshear, TX 77441
Tel.: (786) 505-6186
Facsimile: (855) 510-6764
veronica@seminolaw.com

Attorneys for Petitioner
†Admitted in Florida only; working remotely from Texas.