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**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

	)	
ALBERSON GONZALEZ ACERO,	)	
	)	Case No. 5:26-cv-00673
<i>Petitioner,</i>	)	
	)	PETITION FOR WRIT OF
	)	HABEAS CORPUS
v.	)	
	)	
BOBBY THOMPSON, Warden,	)	
South Texas Detention Center;	)	
	)	
PAMELA BONDI,	)	
Attorney General of the United States; and	)	
	)	
KRISTI NOEM,	)	
Secretary of the U.S.	)	
Department of Homeland Security;	)	
	)	
<i>in their official capacities,</i>	)	
	)	
<i>Respondents.</i>	)	
	)	

INTRODUCTION

1. Petitioner Alberson Gonzalez Acero is in the physical custody of Respondents at the South Texas Detention Facility in Pearsall, Texas. **Exh. A, ICE Detainee Locator Results.** Petitioner entered the United States without inspection near El Paso, Texas, on or about December 27, 2023. *Id.* This was his first and only entry into the United States. He was subsequently detained shortly after his entry and then released on January 2, 2024, on his own recognizance. **Exh. C, Form I-220A U.S. Department of Homeland Security Order of Release on Recognizance, dated January 2, 2024,** which provided that, “[i]n accordance with section 236 of the Immigration and Nationality Act and the applicable provisions of Title 8 of the Code of Federal Regulations,” Petitioner was being released on his “own recognizance.” In doing so, DHS determined that the Petitioner posed no danger or flight risk and that pursuing his removal was not a priority. *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff’d sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018) (“Release reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk.”).
2. Despite releasing him under 1226(a), DHS now insists that its authority to detain him stems from 8 U.S.C. § 1225(b) and that he is therefore ineligible for a bond hearing. This assertion is legally incorrect. Nevertheless, the Executive Office for Immigration Review (EOIR) has validated this position in contravention of the plain text of the statute, decades of statutory interpretation and agency practice, and Respondents' own prior treatment of Petitioner.
3. Federal district courts across the nation have reached a clear consensus: Section 1225(b) does not apply to Petitioner's circumstances, and Respondents' reliance on this

inapplicable statute renders his detention unlawful. Because Petitioner cannot be detained under Section 1225(b)(1) or Section 1225(b)(2), the only lawful basis for continued detention would be Section 1226—which provides for individualized bond determinations. However, Respondents do not assert they are detaining Petitioner under Section 1226. By detaining Petitioner under a statute that does not authorize his detention while simultaneously refusing to apply the statute that does, Respondents hold him in unlawful custody. Petitioner is therefore entitled to immediate release.

4. The present petition filed on behalf of the Petitioner is one of a number of recent lawsuits with similar facts challenging the federal government's authority to detain noncitizens during the pendency of removal proceedings under 8 U.S.C. § 1225(b). Overwhelmingly, federal district courts have ruled in favor of Petitioners. *See e.g. Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *PUERTO-HERNANDEZ, v. LYNCH*, No. 1:25-CV-1097, 2025 WL 3012033 (W.D. Mich. Oct. 28, 2025); *Castellanos v. Kaiser*, No. 25-CV-07962, 2025 WL 2689853, at *3 (N.D. Cal. Sept. 18, 2025); *Cardin Alvarez v. Rivas*, No. CV 25-02943 PHX GMS (CDB), 2025 WL 2898389, at *21 (D. Ariz. Oct. 7, 2025); *J.U. v. Maldonado*, No. 25-CV-04836 (OEM), 2025 WL 2772765 (E.D.N.Y. Sept. 29, 2025); *PÉREZ PINA, v. STAMPER*, No. 2:25-CV-00509-SDN, 2025 WL 2939298 (D. Me. Oct. 16, 2025); *Ochoa Ochoa v. Noem*, No. 25 CV 10865, 2025 WL 2938779, at *5 (N.D. Ill. Oct. 16, 2025); *Bermeo Sicha v. Bernal*, No. 1:25-CV-00418-SDN, 2025 WL 2494530 (D. Me. Aug. 29, 2025).
5. Accordingly, to preserve Petitioner's statutory and constitutional rights, this Court should grant the instant petition for a Writ of Habeas Corpus for the reasons stated *infra*. Absent

an order from this Court, Petitioner will continue to suffer an unconstitutional deprivation of his right to liberty, as well as extreme irreparable harm given the personal facts of his situation. Petitioner asks this Court to find that his detention is unconstitutional and order immediate release from detention.

JURISDICTION

6. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*
7. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).
8. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et. seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

VENUE

9. Venue is proper with this Court because Petitioner is detained at South Texas Detention Facility in Pearsall, Texas, which is within the jurisdiction of this District.

REQUIREMENTS OF 28 U.S.C. § 2243

10. 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 order to show cause 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.* (emphasis added).
11. 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 of England, 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

12. Petitioner, Alberson Gonzalez Acero, is a citizen of Venezuela. He is currently detained at South Texas Detention Facility in Pearsall, Texas. He is in the custody, and under the direct control, of Respondents and their agents.
13. Defendant Bobby Thompson, Warden of the South Texas Detention Facility, has immediate physical custody of Petitioner pursuant to the facility’s contract with U.S. Immigration and Customs Enforcement to detain noncitizens and is a legal custodian of Petitioner.
14. Defendant Kristi Noem is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security (DHS). In this capacity, Defendant Noem is responsible for the implementation and enforcement of the Immigration and Nationality Act, and oversees U.S. Immigration and Customs Enforcement, the component agency responsible for Petitioner’s detention / custody. Defendant Noem is a legal custodian of Petitioner.
15. Respondent Pamela Bondi is sued in her official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice (DOJ). In that capacity, she has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the BIA. Respondent Bondi is a legal custodian of Petitioner.

STATEMENT OF FACTS

16. Petitioner is a 31-year-old native and citizen of Venezuela. He entered the United States without inspection near El Paso, Texas, on or about December 27, 2023 and was taken into custody after turning himself in to immigration authorities. This was his first and only entry into the United States. Petitioner has resided continuously in the United States since that time.
17. A few days after his entry and initial detention, on January 2, 2024, he was issued a Notice to Appear, *See Exh. B, Form I-862 Notice to Appear*. That same day, he was issued an Order of Release on Recognizance, Form I-220A, *See Exh. C, Form I-220A Order of Release on Recognizance*, which is the form that DHS uses to indicate that someone has been released under 8 U.S.C. 1226. That same day he was released from custody. As such, it is very clear that DHS had determined that the Petitioner's release is governed by §1226.
18. Petitioner proceeded to check-in with DHS repeatedly without incident.
19. On or about July 9, 2024, Petitioner filed an I-589 application for asylum. On the basis of his pending asylum application Petitioner obtained an employment authorization document and driver's license in order to support himself.
20. On December 18, 2025, returning from work, Petitioner presented his ID, holding out that he was a citizen of Venezuela and was lawfully pursuing legal status through an application for asylum with an immigration court, to a CBP officer at a check-point near Uvalde, Texas. Petitioner had done this before without incident. However, on this day, rather than proceed as they had before, DHS confiscated his Employment Authorization Document and took him into custody without explanation or cause.

21. He is now detained at the South Texas Detention Facility in Pearsall, Texas. **See Exh. A, ICE Detainee Locator Results.** Despite being previously released on his own recognizance pursuant to 8 U.S.C. § 1226, following a determination that he did not present a flight risk or a danger to the community, the government now insists that Petitioner is subject to detention under 8 U.S.C. § 1225(b) and he is therefore ineligible for release on bond.

LEGAL FRAMEWORK

22. Two statutes principally govern the detention of noncitizens pending removal proceedings: 8 U.S.C. §§ 1225 and 1226. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard non-expedited removal proceedings before an immigration judge (IJ). *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c). Second, § 1225 applies to “applicants for admission,” who are, as relevant here, noncitizens “present in the United States who [have] not been admitted.” 8 U.S.C. § 1225(a)(1). All applicants for admission must be inspected by an immigration officer. *Id.* § 1225(a)(3). DHS can elect to place “arriving” applicants for admission into expedited removal proceedings under § 1225(b)(1). *See* 8 U.S.C. § 1225(b)(1); *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 108-09 (2020). In other cases, if the examining immigration officer determines that an applicant for admission that is “seeking admission” is not “clearly and beyond a doubt entitled to be admitted,” Section 1225(b)(2) provides that the applicant for admission “shall be detained for” standard removal proceedings under 1229a. 8 U.S.C. §

1225(b)(2)(A); *see Jennings v. Rodriguez*, 583 U.S. 281, 287-88 (2018). A noncitizen detained under Section 1225(b)(2) may be released only if he is paroled “for urgent humanitarian reasons or significant public benefit” under 8 U.S.C. § 1182(d)(5)(A). *Jennings*, 583 U.S. at 300 (“That express exception to detention implies that there are no other circumstances under which aliens detained under § 1225(b) may be released.”).

23. Whereas Section 1225(b) “authorizes the Government to detain certain aliens *seeking admission* into the country,” Section 1226 “authorizes the Government to detain certain *aliens already in the country* pending the outcome of removal proceedings.” *Jennings*, 583 U.S. at 289 (emphases added). Section 1226(a) establishes a discretionary detention framework for noncitizens arrested and detained “[o]n a warrant issued by the Attorney General.” For such individuals, the Attorney General (1) “may continue to detain the arrested alien,” (2) “may release the alien on ... bond of at least \$1,500,” or (3) “may release the alien on ... conditional parole.” 8 U.S.C. §§ 1226(a)(1)-(2). The arresting immigration officer makes an initial custody determination, but noncitizens have the right to request a custody redetermination (i.e., bond) hearing before an Immigration Judge. See 8 C.F.R. §§ 1236.1(c)(8), (d)(1).

24. In addition to bond, the government may release a noncitizen detained under Section 1226(a) on an Order of Recognizance, which is a form of conditional parole. *See* 8 U.S.C. § 1226(a)(2)(B); *Matter of Cabrera-Fernandez*, 28 I. & N. Dec. 747, 747 (B.I.A. 2023) (“The respondents were ... released on their own recognizance pursuant to DHS’ conditional parole authority under ... 8 U.S.C. § 1226(a)(2)(B)[.]”); *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1115 (9th Cir. 2007) (“It is apparent that the [government] used

the phrase ‘release on recognizance’ as another name for ‘conditional parole’ under § 1226(a).”); *Cruz-Miguel v. Holder*, 650 F.3d 189, 191 (2d Cir. 2011) (similar).

25. Section 1226(c) is the sole exception to Section 1226(a)’s discretionary detention framework. *See* 8 U.S.C. § 1226(a) (“Except as provided in subsection (c) ... the Attorney General ... may”); *id.* § 1226(c)(1) Section 1226(c) requires the detention of noncitizens who are inadmissible or deportable and who have been arrested, charged with, or convicted of certain crimes. *See id.* §§ 1226(c)(1)(A)-(D).
26. This case concerns the detention provisions at §§ 1226(a) and 1225(b) and specifically whether Petitioner is lawfully detained under Section 1225(b) as the government now contends, or is instead subject to discretionary detention under Section 1226(a), as the government represented in its initial custody determination in 2023.
27. The position of Respondents is that Mr. Gonzalez Acero is subject to mandatory detention without a bond hearing under the plain language of 8 U.S.C. § 1225(b), despite being released on his own recognizance and living in the U.S. at liberty. This unfounded legal theory that noncitizens who entered the United States without admission or parole are ineligible for bond hearings has already been rejected by “[m]ore than 300 federal judges” in “more than 1,600 cases”¹ who have rejected the application of § 1225(b) to such cases.
28. Petitioner cannot be subject to 8 U.S.C. § 1225(b)(1), which is limited in application to those that are placed in expedited removal proceedings, and provides for a detailed, precise process that must be followed. *See* 8 U.S.C. § 1225(b)(1), 8 CFR § 235.3. When DHS apprehended Petitioner in December 2023, DHS had the option to place him in

¹ *Hundreds of judges reject Trump's mandatory detention policy, with no end in sight*, POLITICO (Jan. 5, 2026), <https://www.politico.com/news/2026/01/05/trump-administration-immigrants-mandatory-detention-00709494>

either expedited removal proceedings under 8 U.S.C. § 1225(b)(1), *or* full removal proceedings 8 U.S.C. § 1229a. It opted for the latter and as such, he plainly cannot be subject to 8 U.S.C. § 1225(b)(1). Furthermore, the provisions of 1225(b)(1) are limited to “arriving” aliens, which is not a class that Petitioner falls into. *See* 8 U.S.C. § 1225(b)(1), 8 CFR § 235.3. Indeed “Petitioner is not an ‘arriving’ noncitizen but one that has been present in our country for [nearly two years]. This substantial amount of time indicates he is afforded the Fifth Amendment’s guaranteed due process before removal.” *Noori v. Larose*, No. 25-CV-1824-GPC-MSB, 2025 WL 2800149, at *10 (S.D. Cal. Oct. 1, 2025); *See also Yamataya v. Fisher*, 189 U.S. 86, 87 (1903) (finding a noncitizen was entitled to due process before removal despite having spent only four days in the US); *Make the Rd. New York v. Noem*, No. 25-CV-190 (JMC), 2025 WL 2494908 (D.D.C. Aug. 29, 2025) (staying DHS guidance authorizing expansion of scope of expedited removal to noncitizens apprehended anywhere in the United States on the basis that it violates the Due Process); *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *11 (W.D. Tex. Sept. 22, 2025) (“Because he spent nearly three years at liberty in the United States, Lopez-Arevelo possesses a cognizable interest in his freedom from detention.”)

29. Respondents’ alternative anticipated position that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2) is equally untenable. Respondents are likely to argue that Petitioner is subject to mandatory detention without a bond hearing under the plain language of 8 U.S.C. § 1225(b)(2), despite being released on his own recognizance pursuant to 8 U.S.C. 1226 and living in the U.S. for almost two years.

30. Respondent's position has been resoundingly and repeatedly rejected by federal district courts across the country, including courts in the Fifth Circuit and Texas District Courts.²
31. Respondents' own documents and actions, the plain text of the statute, traditional canons of statutory construction, and DHS' longstanding practices all establish that 1226(a) governs Petitioner's detention.
32. When Petitioner was initially detained and released in December 2023, the Order of Release on Recognizance authorizing his release provided that he was released "[i]n accordance with section 236 of the [INA] and the applicable provisions of Title 8 of the Code of Federal Regulations." **Exh. C, Form I-220A**. While 8 U.S.C. § 1226(a) authorizes release on recognizance, § 1225(b) prohibits it. He was then re-detained in December 2025, while residing in the United States.
33. The "government's treatment of Petitioner since his arrival in the United States in [December 2023], establishes that Petitioner was detained pursuant to the government's discretionary authority under § 1226(a)." *See J.U. v. Maldonado*, No. 25-CV-04836 (OEM), 2025 WL 2772765, at *5 (E.D.N.Y. Sept. 29, 2025).

² *See e.g. Jimenez v. FCI Berlin, Warden*, No. 25-CV-326-LM-AJ, 2025 WL 2639390, at *10 n.9 (D.N.H. Sept. 8, 2025); *Lopez Santos v. Noem*, No. 3:25-CV-01193, 2025 WL 2642278, at *5 (W.D. La. Sept. 11, 2025); *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, (W.D. Tex. Sept. 22, 2025); *Becerra Vargas v. Bondi*, No. SA-25-CV-1023-FB (HJB), 2025 WL 3300446 (W.D. Tex. Nov. 12, 2025), report and recommendation adopted sub nom. *Becerra Vargas v. Bondi*, No. SA-25-CV-1023-FB, 2025 WL 3300141 (W.D. Tex. Nov. 26, 2025); *Vieira v. De Anda-Ybarra*, No. EP-25-CV-00432-DB, 2025 WL 2937880 (W.D. Tex. Oct. 16, 2025); *Parada-Hernandez v. Johnson*, No. 3:25-CV-2729-K-BN, 2025 WL 3465958, (N.D. Tex. Oct. 29, 2025), No. 3:25-CV-2729-K-BN, 2025 WL 3463682 (N.D. Tex. Dec. 2, 2025); *Hernandez-Fernandez v. Lyons*, No. 5:25-CV-00773-JKP, 2025 WL 2976923 (W.D. Tex. Oct. 21, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, 2025 WL 2496379, at *8 n.5 (E.D. Mich. Aug. 29, 2025) (collecting twelve such decisions); *PUERTO-HERNANDEZ, Petitioner, v. LYNCH et al.*, No. 1:25-CV-1097, 2025 WL 3012033 (W.D. Mich. Oct. 28, 2025); *Castellanos v. Kaiser*, No. 25-CV-07962, 2025 WL 2689853, at *3 (N.D. Cal. Sept. 18, 2025); *Cardin Alvarez v. Rivas*, No. CV 25-02943 PHX GMS (CDB), 2025 WL 2898389, at *21 (D. Ariz. Oct. 7, 2025); *J.U. v. Maldonado*, No. 25-CV-04836 (OEM), 2025 WL 2772765 (E.D.N.Y. Sept. 29, 2025); *PÉREZ PINA, v. STAMPER*, No. 2:25-CV-00509-SDN, 2025 WL 2939298 (D. Me. Oct. 16, 2025); *Ochoa Ochoa v. Noem*, No. 25 CV 10865, 2025 WL 2938779, at *5 (N.D. Ill. Oct. 16, 2025); *Bermeo Sicha v. Bernal*, No. 1:25-CV-00418-SDN, 2025 WL 2494530 (D. Me. Aug. 29, 2025).

34. The plain text of Section 1225(b) and Section 1226(a) also clearly establishes 1225(b) does not apply to noncitizens like Petitioner who are arrested while residing in the U.S. Following a noncitizen's arrest and detention and pending the completion of removal proceedings, Section 1226(a) provides that the Attorney General: (1) “may continue to detain the arrested alien”; (2) “may release the alien on ... bond”; or (3) “may release the alien on ... conditional parole.” 8 U.S.C. §§ 1226(a)(1), (a)(2)(A), (a)(2)(B). “The thrice-used permissive word ‘may’ indicates Congress's intent to establish a discretionary, rather than mandatory, detention framework for noncitizens arrested on a warrant.” *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *6 (D. Mass. July 7, 2025)
35. As district courts across the country have repeatedly concluded, Respondents’ “interpretation of the statute (1) disregards the plain meaning of § 1225(b)(2)(A); (2) disregards the relationship between §§ 1225 and 1226; (3) would render a recent amendment to § 1226(c) superfluous; and (4) is inconsistent with decades of prior statutory interpretation and practice.” *Ochoa Ochoa v. Noem*, No. 25 CV 10865, 2025 WL 2938779, at *5 (N.D. Ill. Oct. 16, 2025) (citing *Alejandro v. Olson*, 2025 WL 2896348, at *6 (S.D. Ind. Oct. 11, 2025); *Lopez Benitez v. Francis*, 2025 WL 2371588, at *8 (S.D.N.Y. Aug. 13, 2025) (“[T]he line historically drawn between sections 1225 and 1226, which makes sense of their text and the overall statutory scheme, is that section 1225 governs detention of non-citizens ‘seeking admission into the country,’ whereas section 1226 governs detention of non-citizens ‘already in the country.’ ”) (cleaned up) *Diaz Martinez v. Hyde*, 2025 WL 2084238, at *8 (D. Mass. July 24, 2025) (“The idea that a different detention scheme would apply to non-citizens ‘already in the country,’ as

compared to those ‘seeking admission into the country,’ is consonant with the core logic of our immigration system.”) (cleaned up) (citing *Jennings*, 583 U.S. at 289).

36. In addition, “CBP’s decision to conditionally parole [Petitioner] under Section 1226(a) is consistent with its longstanding practice of conditionally paroling noncitizens arrested near the border. *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *3, f.7 (D. Mass. July 7, 2025) (citing Transcript of Oral Argument, at 44:24-45:2, *Biden v. Texas*, 597 U.S. 785 (2022) (No. 21-954) (Solicitor General representing that “DHS’s long-standing interpretation has been that 1226(a) applies to those who have crossed the border between ports of entry and are shortly thereafter apprehended.”)).
37. “Because Petitioner cannot be detained under Section 1225(b)(2)” and “Respondents do not claim that Petitioner is being detained under Section 1226,” Petitioner’s detention is plainly “unlawful, and habeas relief is proper” through an order requiring immediate release. *See Perez v. Noem*, No. SA-25-CA-01534-XR, 2025 WL 3654262, at *7 (W.D. Tex. Dec. 5, 2025). *See also Granados v. Noem*, No. SA-25-CA-01464-XR, 2025 WL 3296314, at *7 (W.D. Tex. Nov. 26, 2025) (same); *Perez v. Noem*, No. SA-25-CA-01534-XR, 2025 WL 3654262, at *7 (W.D. Tex. Dec. 5, 2025) (same); *F.R.R. v. Rodriguez*, No. SA-25-CA-01564-XR, 2025 WL 3654266, at *8 (W.D. Tex. Dec. 5, 2025) (same); *Mercado v. Lyons*, No. 5:25-CV-1623-JKP, 2025 WL 3654268, at *6 (W.D. Tex. Dec. 11, 2025) (same); *Diaz Perez v. Thompson*, No. 5:25-CV-1664-JKP, 2025 WL 3654333, at *7 (W.D. Tex. Dec. 15, 2025) (same); *AMM v. Thompson*, No. SA-25-CV-01210-FB, 2025 WL 3296315, at *3 (W.D. Tex. Nov. 26, 2025) (same).
38. Finally, Respondents’ actions implicate constitutional due process. Noncitizens are entitled to due process of the law under the Fifth Amendment. *Demore v. Kim*, 538 U.S.

510, 523 (2003). “To determine whether a civil detention violates a detainee’s due process rights, courts apply the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976).” *Martinez v. Noem*, No. 5:25-cv-1007-JKP, 2025 WL 2598379, at *2 (W.D. Tex. Sept. 8, 2025). Those factors are: (1) “the private interest that will be affected by the official action”; (2) “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 (3) “the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” *Mathews*, 424 U.S. at 335, 96 S.Ct. 893.

39. As to the first element, “[t]he interest in being free from physical detention’ is ‘the most elemental of liberty interests.’ ” *Martinez v. Noem*, 2025 WL 2598379, at *2 (quoting *Hamdi v. Rumsfeld*, 542 U.S. 507, 529, 124 S.Ct. 2633, 159 L.Ed.2d 578 (2004)). Petitioner possesses a cognizable interest in his freedom from detention because he spent nearly two years at liberty in the United States. See *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *11 (W.D. Tex. Sept. 22, 2025) (“Because he spent nearly three years at liberty in the United States, Lopez-Arevelo possesses a cognizable interest in his freedom from detention.”)

40. Under the second *Mathews* factor, the Court considers “whether the challenged procedure creates a risk of erroneous deprivation of individuals’ private rights and the degree to which alternative procedures could ameliorate these risks.” *Martinez v. Noem*, 2025 WL 2598379, at *3 (quoting *Gunaydin v. Trump*, 784 F.Supp.3d 1175, 1187 (D. Minn. 2025)). Here, Petitioner’s only recourse would be to request a custody redetermination hearing before the immigration judge. This would be a completely futile exercise because the

immigration judge is mandated to follow the Board of Immigration Appeals decision in *Yajure Hurtado* which deprives the judge of jurisdiction over any request for release on bond. *See Matter of Yajure-Hurtado* 29 I&N Dec. 216 (BIA 2025).³

41. On the final factor, Respondents cannot identify any meaningful countervailing interest, other than perhaps their generalized interest in enforcing the INA as they interpret it. “But the decision to release [Petitioner] on his own recognizance [two] years ago, in and of itself, ‘reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk.’” *Lopez-Arevelo*, 2025 WL 2691828, at *11 (citing *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff’d* 905 F.3d 1137 (9th Cir. 2018)). Mr. Gonzalez Acero diligently pursued relief and complied with all conditions of release. Nor has he committed any crimes or endangered anyone during his nearly two years at liberty in the United States.
42. Overwhelmingly, federal courts have sided with immigrant detainees challenging their detention in cases involving comparable circumstances, on statutory and constitutional grounds, including courts in the Fifth Circuit and Texas District Courts.⁴

³ In addition, Petitioner’s case is unaffected by *Maldonado Bautista v. Santacruz* because he is not a class member. *See Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3288403, at 9 (C.D. Cal. Nov. 25, 2025) (defining the Bond Eligible Class 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.”)

⁴ *See e.g. Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *PUERTO-HERNANDEZ, Petitioner, v. LYNCH et al.*, No. 1:25-CV-1097, 2025 WL 3012033 (W.D. Mich. Oct. 28, 2025); *Castellanos v. Kaiser*, No. 25-CV-07962, 2025 WL 2689853, at *3 (N.D. Cal. Sept. 18, 2025); *Cardin Alvarez v. Rivas*, No. CV 25-02943 PHX GMS (CDB), 2025 WL 2898389, at *21 (D. Ariz. Oct. 7, 2025); *J.U. v. Maldonado*, No. 25-CV-04836 (OEM), 2025 WL 2772765 (E.D.N.Y. Sept. 29, 2025); *PÉREZ PINA, v. STAMPER*, No. 2:25-CV-00509-SDN, 2025 WL 2939298 (D. Me. Oct. 16, 2025); *Ochoa Ochoa v. Noem*, No. 25 CV 10865, 2025 WL 2938779, at *5 (N.D. Ill. Oct. 16, 2025); *Bermeo Sicha v. Bernal*, No. 1:25-CV-00418-SDN, 2025 WL 2494530 (D. Me. Aug. 29, 2025); *Becerra Vargas v. Bondi*, No. SA-25-CV-1023-FB (HJB), 2025 WL 3300446 (W.D. Tex. Nov. 12, 2025), report and recommendation adopted sub nom. *Becerra Vargas v. Bondi*, No. SA-25-CV-1023-FB, 2025 WL 3300141 (W.D. Tex. Nov. 26, 2025); *Vieira v. De Anda-Ybarra*, No. EP-25-CV-00432-DB, 2025 WL 2937880 (W.D. Tex. Oct. 16, 2025); *Parada-Hernandez v. Johnson*, No. 3:25-CV-2729-K-BN, 2025 WL 3465958, (N.D. Tex. Oct. 29,

43. Indeed, the “appropriate relief for an immigration detainee held in violation of their right to due process is their immediate release from custody, and to be provided with relief returning them to status quo ante, i.e., the last uncontested status which preceded the pending controversy.” *Cardin Alvarez v. Rivas*, No. CV 25-02943 PHX GMS (CDB), 2025 WL 2898389, at *21 (D. Ariz. Oct. 7, 2025). “With regard to the specifics of the relief that might be ordered, in recent weeks many federal district courts” –including Texas District Courts– “have ordered the immediate release of immigration habeas petitioners held in custody in violation of their due process rights.” *Id.*⁵
44. Alternatively, the court should order a bond hearing as a habeas remedy where the burden is on the government. Indeed “as of 2020, the ‘vast majority’—an ‘overwhelming consensus’—of courts granting immigration detainees’ habeas petitions have placed the burden on the Government to prove by clear and convincing evidence that the detainee poses a danger or flight risk.” *Lopez-Arevelo*, 2025 WL 2691828, at *12 (citing *Velasco Lopez*, 978 F.3d at 855 n.14 (citations omitted)). “Allocating the burden in this manner reflects the concern that ‘[b]ecause the alien’s potential loss of liberty is so severe ... he should not have to share the risk of error equally.’” (citing *German Santos*, 965 F.3d at

2025), No. 3:25-CV-2729-K-BN, 2025 WL 3463682 (N.D. Tex. Dec. 2, 2025); *Hernandez-Fernandez v. Lyons*, No. 5:25-CV-00773-JKP, 2025 WL 2976923 (W.D. Tex. Oct. 21, 2025).

⁵ See also *Santiago v. Noem*, No. 25-cv-361, 2025 WL 2792588 (W.D. Tex. Oct. 1, 2025); See also *J.U. v. Maldonado*, No. 25-cv-4836, 2025 WL 2772765 (E.D.N.Y. Sept. 29, 2025); *Zumba v. Bondi*, No. 25-cv-14626, 2025 WL 2753496 (D.N.J. Sept. 26, 2025); *Sampiao v. Hyde*, No. 25-cv-11981, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Rosado v. Figueroa*, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025); *M.S.L. v. Bostock*, 2025 WL 2430267 (D. Or. Aug. 21, 2025); *Bermeo Sicha v. Bernal*, No. 1:25-CV-00418-SDN, 2025 WL 2494530 (D. Me. Aug. 29, 2025). See also *Galdamez Martinez v. Noem*, No. SA-25-CV-01373-JKP, 2025 WL 3471575, at *6 (W.D. Tex. Nov. 26, 2025) (ordering immediate release) (“Because Petitioner cannot be detained under § 1225(b)(2), further detention is permissible only if there is a valid source of lawful detention. However, Respondents do not assert any other basis for detaining Petitioner.”); *Aguinaga Trujillo v. Noem*, No. 5:25-CV-1266-JKP, 2025 WL 3471572 (W.D. Tex. Nov. 24, 2025) (same); *Mo-Rales v. Thompson*, No. SA-25-CV-01391-JKP, 2025 WL 3470871 (W.D. Tex. Nov. 21, 2025) (same).

214). “And the consensus appears to be holding, with many courts in recent days ordering a bond hearing, at which the Government bears the burden of justifying the immigration habeas petitioner’s continued detention by clear and convincing evidence.” *Id.* ; *Velasquez Salazar v. Dedos*, No. 25-cv-835, 2025 WL 2676729, at *9 (D.N.M. Sept. 17, 2025); *Morgan v. Oddo*, No. 24-cv-221, 2025 WL 2653707, at *1 (W.D. Pa. Sept. 16, 2025); *J.M.P. v. Arteta*, No. 25-cv-4987, 2025 WL 2614688, at *1 (S.D.N.Y. Sept. 10, 2025); *Espinoza*, 2025 WL 2581185, at *14; *Arostegui-Maldonado v. Baltazar*, 2025 WL 2280357, at *12 (D. Colo. Aug. 8, 2025). *Escobar-Arauz v. Noem*, No. EP-25-CV-00619-DB, 2025 WL 3543648 (W.D. Tex. Dec. 10, 2025); *Espinoza v. Noem*, No. EP-25-CV-00618-DB, 2025 WL 3543646 (W.D. Tex. Dec. 10, 2025).

EXHAUSTION OF ADMINISTRATIVE REMEDIES

45. The Petitioner has exhausted his administrative remedies to the extent required by law. It would be futile to require the Petitioner to file a bond redetermination request with the Immigration Court given that the BIA has already announced its decision on the issue of bond jurisdiction in *Yajure Hurtado*. In fact, *Yajure Hurtado* states that “Immigration Judges lack authority to hear bond requests or to grant bond to aliens, like the Defendant, who are present in the United States without admission.” *Yajure Hurtado*, 29 I&N Dec. at. 225.

CAUSES OF ACTION

COUNT ONE

Violation of 8 U.S.C. § 1226(a)

Unlawful Re-detention after being released under 8 U.S.C. 1226(a)

46. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

47. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to noncitizens residing in the United States who have already been determined by DHS to be subject to discretionary detention under 8 U.S.C. 1226(a). The application of § 1225(b)(2) to bar Petitioner from receiving a bond redetermination hearing before an immigration judge violates the Immigration and Nationality Act.

COUNT TWO
Violation of Fifth Amendment Right to Due Process

48. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.
49. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. “Freedom from imprisonment— from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001).
50. Petitioner has a fundamental interest in liberty and being free from official restraint.
51. The government’s arbitrary subjection of Petitioner to mandatory detention pursuant to 8 U.S.C. 1225, after affording him two years of release on his own recognizance under § 1226 without affording him any opportunity to contest his detention within the agency violates his right to Due Process pursuant to the Fifth Amendment.

PRAYER FOR RELIEF

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

- (1) Assume jurisdiction over this matter and maintain jurisdiction to the extent necessary to ensure Respondents’ compliance with any order this Court may issue;
- (2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days.
- (3) Declare that the refusal to allow Petitioners a bond redetermination hearing before an immigration judge violates the INA and the Due Process clause of the Fifth Amendment;
- (4) Issue a Writ of Habeas Corpus requiring that Respondents immediately release the Petitioner, or, in the alternative, provide a custody redetermination hearing before an

impartial Immigration Judge where the Government bears the burden to prove by clear and convincing evidence that the detainee poses a danger or flight risk;

(5) Order further relief as this Court deems just and appropriate.

Respectfully submitted,

/s/ Lucia Curiel
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Attorney for Petitioner

Dated: February 3, 2026

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

I represent Petitioner, ALBERSON GONZALEZ ACERO, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 3rd day of February, 2026.

/s/ Lucia Curiel
Lucia Curiel, Esq.
Attorney for Petitioner

CERTIFICATE OF SERVICE
Gonzalez-Acero v. Thompson, et al
Case No. 5:26-cv-00673

I hereby certify that on February 4, 2026, the Respondents stated below were named and notified by Electronic Filing about the Petition for Writ of Habeas Corpus in the CM/ECF habeas corpus filing with the Southern District of Texas court.

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/s/ Lucia Curiel