

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

NELSON YOVANI SANCHEZ LEMUS

Petitioner

-against-

KRISTI NOEM, IN HER OFFICIAL
CAPACITY, SECRETARY, U.S.
DEPARTMENT OF HOMELAND
SECURITY

PAMELA BONDI, IN HER OFFICIAL
CAPACITY,
U.S. ATTORNEY GENERAL

TODD LYONS, IN HIS OFFICIAL
CAPACITY, ACTING DIRECTOR,
IMMIGRATION AND CUSTOMS
ENFORCEMENT

CHARLOTTE COLLINS, WARDEN IN
HER OFFICIAL CAPACITY, DON T.
HUTTO DETENTION CENTER

SYLVESTER ORTEGA, IN HIS
OFFICIAL CAPACITY ICE FIELD
OFFICE DIRECTOR DETENTION
AND REMOVAL

Respondents.

**PETITION FOR
WRIT OF HABEAS CORPUS**

Case No: 1:26-cv-260

**AMENDED PETITION FOR WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241 AND
COMPLAINT FOR PRELIMINARY INJUNCTIVE RELIEF**

INTRODUCTION

1. Nelson Yovani Sanchez-Lemus (hereinafter “Petitioner”) is a (44)-year-old citizen and native of Guatemala.
2. Petitioner first entered the United States on or about January 28, 2006, without being admitted or paroled in Hidalgo, TX. Since that time, Petitioner has remained physically present in the United States and has established his life in this country.
3. Petitioner is the father of 2 USC children, who reside in Lockhart, TX.
4. Petitioner’s two United States citizen children depend on him to provide emotional and financial support.
5. On September 10, 2025 the Department of Homeland Security initiated removal proceedings under 8 U.S.C. § 1229a. *See* Exhibit 1 - EOIR Case Portal
6. On November 03, 2025, Petitioner had a bond redetermination request which was denied due to lack of jurisdiction under *See, Matter of Q.Li*, 29 I&N Dec. 66, 67-68 (BIA 2025) and, *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). *See* Exhibit 2 - Order of the Immigration Judge.
7. Petitioner applied for Cancellation of Removal for Certain Non Permanent Residents and Adjustment of Status under 8 U.S.C. § 1229b(b)(1) and Post Merits Voluntary Departure 8 U.S.C. 1229c.
8. On December 9, 2025, Petitioner’s trial on the merits was held and denied Petitioner’s applications for relief. *See* Exhibit 3 - Amended Order of the Immigration Judge.
9. Petitioner’s case remains in direct appeal before the Board of Immigration Appeals. *See* Exhibit 4 - Filing Receipt for Appeal or Motion.

10. Without relief from this court, Petitioner faces continued detention without the possibility of an individualized bond hearing.
11. Petitioner is a class member in Maldonado Bautista v. Santacruz, No. 5:25-CV-01873SSS-BFM (C.D. Cal.). In Maldonado-Bautista the court certified the Bond Eligible Class, defined as: All noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination. Maldonado Bautista v. Santacruz, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025). Petitioner is a noncitizen without lawful status detained by DHS who (1) entered the United States without inspection, (2) was not apprehended upon arrival, and (3) is not subject to mandatory detention pursuant to 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231. Accordingly, as a member of the Bond Eligible Class, Petitioner is entitled to the application of the law as stated in the Maldonado Bautista orders.
12. Petitioner preserves the statutory argument rejected in Buenrostro for purposes of further review. The question of whether detention authority arises under INA § 235, 8 U.S.C. § 1225, or INA § 236, 8 U.S.C. § 1226, for noncitizens already present in the United States remains the subject of ongoing litigation in multiple courts of appeals. Because the Fifth Circuit sitting en banc or the Supreme Court may revisit or reject the panel's conclusion in Buenrostro, Petitioner raises this statutory claim to preserve the issue and ensure eligibility for relief should the governing law change.

13. On July 8, 2025, DHS issued a new policy memorandum to all employees of Immigration and Customs Enforcement (“ICE”) stating that “[t]his message serves as notice that DHS, in coordination with the Department of Justice (Hereinafter “DOJ”), has revisited its legal position on detention and release authorities. DHS has determined that section 235 of the Immigration and Nationality Act (INA), rather than section 236, is the applicable immigration detention authority for all applicants for admission. The following interim guidance is intended to ensure immediate and consistent application of the Department’s legal interpretation while additional operational guidance is developed.” Memorandum, U.S. Immigration & Customs Enf’t, Interim Guidance Regarding Detention Authority for Applications for Admission (July 8, 2025), available at AILA Doc. No. 25071607, <https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>.
14. Through his pending application, Petitioner will have the opportunity to become a lawful permanent resident, and his removal is not reasonably foreseeable due to a pending application for relief.
15. Petitioner is detained at the DON T. HUTTO Detention Facility away from his family.
16. Petitioner’s detention pursuant to 8 U.S.C. § 1225(b)(2)(A) violates the plain language of the INA and its implementing regulations. Petitioner, who was apprehended in the interior of the U.S., should not be considered an “applicant for admission” who is “seeking admission.” Rather, he should continue to be detained pursuant to 8 U.S.C. § 1226(a), which was DHS’s initial determination for Petitioner and allows for release on conditional parole of bond.

17. Through this petition, Petitioner asks this Court to find that Respondents have unlawfully detained him under 8 U.S.C. § 1225(b)(2)(A), that his detention is appropriate under 8 U.S.C. § 1226(a).

JURISDICTION

18. Jurisdiction is proper and relief is available pursuant to 28 U.S.C. § 1131 (federal question), 28 USC § 1346 (original jurisdiction), 5 USC §702 (waiver of sovereign immunity), 28 USC 2241 (habeas corpus jurisdiction), and Article I, § 9, cl. 2 of the United States Constitution(Suspension Clause).

VENUE

19. Venue is proper because Petitioner and his immediate family reside in Texas and he now remains detained at the DON T. HUTTO Detention Facility, 1001 Welch St, Taylor, Texas, United States 76574. *See* ICE Detainee Locator; *see also* generally Rumsfeld v. Padilla, 542 U.S. 426, 447 (2004) (generally, “[w]hen a § 2241 habeas petitioner seeks to challenge his present physical custody within the United States,” he must file the petition in the district of confinement and name his immediate custodian as the respondent), *see also* Braden v. 30th Judicial Circuit of Kentucky, 410 U.S. 484,493-500 (1973), venue lies in the United States District Court for the Western District of Texas, the judicial district in which petitioner is currently detained.

PARTIES

20. Petitioner, is a citizen and national of Mexico. Previous to his detention, he resided with his family in Lockhart, TX.

21. He is currently in ICE custody and detained at DON T. HUTTO Detention Facility, 1001 Welch St, Taylor, Texas, United States 76574.
22. Respondent Kristi NOEM is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the Immigration and Nationality Act and oversees ICE, which is responsible for Petitioner's detention. Ms. Noem has ultimate custodial authority over Petitioner. In this capacity, she is responsible for the administration of immigration laws pursuant to Section 103(a) of the INA, 8 U.S.C. § 1103(a) (2007); routinely transacts business in the Western District of Texas; is legally responsible for pursuing any effort to detain and remove the Petitioner; and as such is a custodian of the Petitioner. She is sued in her official capacity. Respondent Noem's address is U.S. Department of Homeland Security, Office of the General Counsel, 2707 Martin Luther King Jr. Ave. SE, Washington, DC 20528-0485.
23. Respondent Pamela BONDI is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system operates as a component agency. She routinely transacts business in the Western District of Texas in this capacity; is responsible for the administration of the immigration laws pursuant to Section 103(a) of the INA, 8 U.S.C. § 1103(g) (2007); and as such is a custodian of the Petitioner. She is sued in her official capacity. At all times relevant hereto, Respondent Bondi's address is U.S. Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530- 0001.
24. Respondent Todd M. LYONS is named in his official capacity as the Acting Director of ICE. He administers and enforces the immigration laws of the United States, routinely conducts business in the Western District of Texas, Austin Division, is legally responsible

for pursuing efforts to remove the Petitioner, and as such is the custodian of the Petitioner. ICE's responsibilities include operating the immigration detention system. In his capacity as ICE Acting Director, Respondent Lyons exercises control over and is custodian of persons held at ICE facilities nationally. He is the Petitioners' immediate custodian and responsible for Petitioner's detention. He is sued in his official capacity. At all times relevant hereto, Respondent Lyons's address is ICE, Office of the Principal Legal Advisor, 500 12th St. SW, Mail Stop 5900, Washington DC 20536-5900.

25. Respondent CHARLOTTE COLLINS is the warden at the DON T. HUTTO Detention Facility, 1001 Welch St, Taylor, Texas, United States 76574, where the petitioner is detained. The Warden has immediate physical custody of Petitioner. The Warden is sued in her official capacity.

26. Respondent, SYLVESTER ORTEGA, is ICE Field Officer Director of Detention and Removal. Respondent ORTEGA is a custodial official acting within the boundaries of the judicial district of the United States Court for the Western District of Texas, Austin Division. Pursuant to Respondent ORTEGA's orders, Petitioner remains behind bars.

LEGAL BACKGROUND

27. Section 2241 of 28 United States Code provides in relevant part that "[w]rits of habeas corpus may be granted by . . . the district courts within their respective jurisdictions" when a petitioner "is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(a), (c)(3); *see also* *L.N.S. v. St. Cyr*, 533 U.S. 289, 305, 121 S. Ct. 2271 (2001).

28. District courts grant writs of habeas corpus to those who demonstrate their custody violates the Constitution or laws of the United States. 28 U.S.C. § 2241(c)(3).

29. Habeas corpus “entitles [a] prisoner to a meaningful opportunity to demonstrate that he is being held pursuant to ‘the erroneous application or interpretation’ of relevant law.” Boumediene v. Bush, 553 U.S. 723, 779, 128 S. Ct. 2229 (2008) (quoting, St. Cyr, 533 U.S. at 302).
30. The Fifth Amendment’s Due Process Clause protects the right of all persons to be free from “deprivation of life, liberty, or property, without due process of law.” U.S. Const. amend. V.
31. “It is well established that the Fifth Amendment entitles aliens to due process of law[.]” Trump v. J. G. G., 604 U.S. ---, 145 S. Ct. 1003, 1006 (2025) (quoting Reno v. Flores, 507 U.S. 292, 306, 113 S. Ct. 1439 (1993)).
32. “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, 533 U.S. at 690.
33. The INA prescribes three basic mechanisms for detention for non-citizens, 8 U.S.C. § 1225, for arriving aliens and applicants for admission, § 1226 the default detention statute, and § 1231 for post-final order detention.
34. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (“IIRIRA”) of 1996, Pub. L. No. 104-208. Div. C, §§ 302-03, 110 Stat. 3009-546, 300-582 to 3009-583, 3009-585. Section 1226 was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).
35. Following the enactment of the IIRIRA, the U.S. Department of Justice’s Executive Office of Immigration Review (“EOIR”) drafted new regulations explaining that, in

general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) (“Despite being applicants for admission, aliens who are present without having been admitted or paroled (formed referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination).

36. Thus, in the decades that followed, most people who entered without inspection and were thereafter detained and placed in standard removal proceedings were considered for release on bond and also received bond hearings before an Immigration Judge (“IJ”), unless their criminal history rendered them ineligible. That practice was consistent with many more decades of prior practice, in which noncitizens who had entered the United States, even if without inspection, were entitled to a custody hearing before an IJ or other hearing officer. In contrast, those who were stopped at the border were only entitled to release on parole. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 220 (1996) (noting that § 1226(a) simply “restates” the detention authority previously found at § 1252(a)).

37. For decades, residents of the U.S. who entered without inspection and were subsequently apprehended by ICE in the interior of the country have been detained pursuant to § 1226 and entitled to bond hearings before an IJ, unless barred from doing so due to their criminal history.

38. On July 8, 2025, however, DHS changed its position about custody determinations as follows:

An “applicant for admission” is an alien present in the United States who has not been admitted or who arrives in the United States, whether or not at a designated port of arrival. INA § 235(a)(1). Effective immediately, it is the position of DHS that such aliens are subject to detention under INA § 235(b) and may not be released from ICE custody except by INA § 212(d)(5) parole. These aliens are also ineligible for a custody redetermination hearing (“bond hearing”) before an immigration judge and may not be released for the duration of their removal proceedings absent a parole by DHS. For custody purposes, these aliens are now treated in the same manner that “arriving aliens” have historically been treated. The only aliens eligible for a custody determination and release on recognizance, bond, or other conditions under INA § 236(a) during removal proceedings are aliens admitted to the United States and chargeable with deportability under INA § 237, with the exception of those subject to mandatory detention under INA § 236(c).

39. Moving forward, ICE will not issue Form I-286, Notice of Custody Determination, to applicants for admission because Form I-286 applies by its terms only to custody determinations under INA § 236 and part 236 of Title 8 of the Code of Federal Regulations. With a limited exception for certain habeas petitioners, on which the Office of the Principal Legal Advisor (OPLA) will individually advise, if Enforcement and Removal Operations (ERO) previously conducted a custody determination for an applicant for admission still detained in ICE custody, ERO will affirmatively cancel the Form I-286. *See* <https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission> (emphasis original).

40. As a result, according to DHS, all noncitizens who have entered the United States without inspection and are subject to the grounds of inadmissibility, including long-time U.S. residents, are now considered to be subject to mandatory detention under INA § 235(b) and ineligible for release on bond. Conversely, according to DHS “[t]he only aliens eligible for a custody determination and release on recognizance, bond, or other conditions under INA § 236(a) during removal proceedings are aliens admitted to the United States and chargeable with deportability under INA § 237, with the exception of those subject to mandatory detention under INA § 236(c).” *Id.*
41. Prior to July 8, 2025, the predominant form of detention authority for anyone arrested in the interior of the United States was 8 U.S.C. § 1226(a).
42. Under § 1226(a) the Attorney General may release a non-citizen from custody on bond or on the non-citizen’s own recognizance. 8 U.S.C. § 1226(a) confers such authority to the Executive Office for Immigration Review and ICE.
43. Under the current statutory and regulatory scheme, once a non-citizen is detained, ICE makes the initial custody determination. See 8 C.F.R. § 236.1(c)(8). If ICE makes an unfavorable detention decision, a non-citizen has the right to have an Immigration Judge redetermine the non-citizen’s custody status. “[T]he Immigration Judge is authorized to exercise the authority... to detain the alien in custody, release the alien, and determine the amount of bond.” *Id.* § 236.1(d)(1).

CONSTITUTIONALLY ADEQUATE BOND HEARING

44. The Due Process Clause requires constitutionally adequate bond hearings. “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). Detention must “bear [a] reasonable relation to the purpose for which the individual [was] committed.” *Id.* At 690 (quoting Jackson v. Indiana, 406 U.S. 715, 738 (1972))

45. At a minimum, due process requires “adequate procedural protections” to ensure that the Government’s asserted justification for physical confinement “outweighs the individual’s constitutionally protected interest in avoiding physical restraint.” *Id.* (internal quotation marks omitted).
46. In civil detention cases, the Supreme Court “repeatedly has recognized that civil commitment for any purpose constitutes a significant deprivation of liberty.” Singh, 638 F.3d 1196, 1204-05 (9th Cir. 2011) (quoting Addington v. Texas, 441 U.S. 418, 425 (1979)) (emphasis in original).
47. Civil detention is impermissible without an individualized hearing before a neutral decision maker that tests the Government’s justification for imprisonment. *See United States v. Salerno*, 481 U.S. 739, 750-51 (1987) (upholding civil pretrial detention of individuals charged with crimes only upon individualized findings of dangerousness or flight risk at custody hearings); Foucha v. Louisiana, 504 U.S. 71, 81-83 (1992) (requiring individualized finding of mental illness and dangerousness for civil commitment); Kansas v. Hendricks, 521, U.S. 346, 357 (1997) (upholding civil commitment of sex offenders after jury trial on lack of volitional control and dangerousness).
48. The Ninth Circuit and other district courts have held that immigration detainees are entitled to bond hearings at which the Government bears the burden to prove by clear and convincing evidence that detainees would be a flight risk or danger to the community. *See, e.g., Singh*, 638 F.3d at 1204-05; Pensamiento v. McDonald, 315 F. Supp. 3d 684,

692 (D. Mass. 2018) (holding that due process requires the burden of proof be placed on the government in custody redetermination hearings for non-criminal aliens) (Saris, C.J.); Alvarez Figueroa v. Mc Donald, Civil Action No. 18-10097-PBS, 2018 U.S. Dist. LEXIS 80781, at *15-16 (D. Mass. May 14, 2018) (“The Zadvydas Court then cited to criminal pretrial detention and civil commitment cases, making it clear that one important procedural protection for preventive detention is the placement of the burden of proof of the government.”) (Saris, C.J.); Doe v. Tompkins, Case No. 18-cv-12266-PBS, 2019 U.S. Dist. LEXIS 22616, at *4 (D. Mass. Feb 12, 2019) holding that due process requires that the burden of proving that the respondent is dangerous and is a flight risk be placed on the government in § 1226(a) custody redetermination hearings) (Saris, C.J.); Diaz-Ortiz v. Tompkins, Case No. 18-cv-12600-PBS, 2019 U.S. Dist. LEXIS 14155, at *3-4 (D. Mass. Jan. 29, 2019) (same) (Saris, C.J.); Martinez v. Decker, No. 18-CV-6527 (JMF), 2018 U.S. Dist. LEXIS 178577, at *13 (S.D.N.Y. Oct. 17, 2018) (concluded that “due process requires the Government to bear the burden of proving that detention is justified at a bond hearing under Section 1226(a).”); Darko v. Sessions, 342 F. Supp. 3d 429, 436 (S.D.N.Y. 2018) (same; further, “the Court concludes that the government must bear the burden by clear and convincing evidence.”); Haughton v. Crawford, 221 F. Supp. 3d 712, 713-17 (E.D. Va. 2016) (“the significant deprivation of liberty warrants the robust procedural protections afforded by requiring the government to demonstrate by clear and convincing evidence that petitioner’s ongoing detention is appropriate to protect the community and ensure petitioner’s appearance at future proceedings.”) Portillo v. Hott, 322 F. Supp. 3d 698, 2018 WL 3237898, at *8 *n.9 (E.D. Va. 2018) (reaffirming Haughton as “good authority”).

STATEMENT OF THE FACTS

49. Nelson Yovani Sanchez Lemus (hereinafter “Petitioner”) is a (44)-year-old citizen and native of Guatemala.
50. Petitioner first entered the United States on or about January 28, 2006, without being admitted or paroled in Hidalgo, TX. Since that time, Petitioner has remained physically present in the United States and has established his life in this country.
51. Petitioner is the father of 2 children USC who reside in Lockhart, TX.
52. Petitioner’s two United States citizen children depend on him to provide emotional and financial support.
53. On September 10, 2025 the Department of Homeland Security initiated removal proceedings under 8 U.S.C. § 1229a. *See* Exhibit 1 - EOIR Case Portal
54. On November 03, 2025, Petitioner had a bond redetermination request which was denied due to lack of jurisdiction under *See, Matter of Q.Li*, 29 I&N Dec. 66, 67-68 (BIA 2025) and, *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). *See* Exhibit 2 - Order of the Immigration Judge.
55. Petitioner applied for Cancellation of Removal for Certain Non Permanent Residents and Adjustment of Status under 8 U.S.C. § 1229b(b)(1) and Post Merits Voluntary Departure 8 U.S.C. 1229c.
56. On December 9, 2025, Petitioner’s trial on the merits was held and denied Petitioner’s applications for relief. *See* Exhibit 3 - Amended Order of the Immigration Judge.
57. Petitioner’s case remains in direct appeal before the Board of Immigration Appeals. *See* Exhibit 4 - Filing Receipt for Appeal or Motion.

58. Without relief from this court, Petitioner faces continued detention without the possibility of an individualized bond hearing.
59. Without relief from this court, Petitioner faces continued detention without the possibility of an individualized bond hearing.
60. Without relief from this court, Mr. Sanchez-Lemus faces continued detention without the possibility of an individualized bond hearing.

CLAIMS FOR RELIEF

COUNT I

MATHEWS V. ELDRIDGE PROCEDURAL DUE PROCESS CLAIM

61. 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, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976). 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; *see also Hernandez-Fernandez v. Lyons*, 2025 WL 2976923 at *8 (W.D. Tex. Oct. 21, 2025).

1. PRIVATE INTEREST

62. “‘The interest in being free from physical detention’ is ‘the most elemental of liberty interests.’” *Martinez v. Noem*, No. 5:25-CV-01007-JKP, 2025 WL 2598379, at *2 (W.D. Tex. Sept. 8, 2025) (quoting *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)). Federal courts in Texas have found that noncitizens have a protected liberty interest in their

freedom, regardless of citizenship status, when they have spent time living, working, or supporting a family in the interior of the United States. See, e.g., *Lopez Miranda v. Flores*, No. EP-25-CV-584-KC, 2025 WL 3901908, at *3 (W.D. Tex. Dec. 10, 2025); *Chinchilla v. De Anda-Ybarra*, No. EP-25-CV-00548-DB, 2025 WL 3645178 (W.D. Tex. Dec. 16, 2025) (finding noncitizen has protectable liberty interest because he was “living in the United States for over four years and attends his local church”); *Hernandez-Fernandez*, 2025 WL 2976923 at *9 (“Because he spent nearly three years at liberty in the United States, [petitioner] possesses a cognizable interest in his freedom from detention.”).

63. Mr. Sanchez-Lemus has been living in the United States for 30 years. Since that time, Petitioner has remained physically present in the United States and has established his life in this country. He is the father of 2 United States Citizen children, who depend on him for financial and emotional support. Mr. Sanchez-Lemus applied for Cancellation of Removal for Certain Non Permanent Residents and Adjustment of Status under 8 U.S.C. § 1229b(b)(1) and remains in direct appeal before the Board of Immigration Appeals. Through his pending application, Mr. Sanchez-Lemus will have the opportunity to become a lawful permanent resident, and his removal is not reasonably foreseeable due to a pending application for relief.

2. RISK OF ERRONEOUS DEPRIVATION

64. The government’s refusal to provide bond hearings creates a high risk of erroneous deprivation, since the process afforded in removal proceedings does “not ameliorate the risk that [a petitioner] will be erroneously deprived of his liberty while his removability is assessed.” See *Rojas v. Noem*, 2025 WL 3038262 at *3-*4. Bond hearings that “conduct

individualized custody determinations considering flight risk and dangerousness” are the precise “type of proceeding that would give [a noncitizen] an opportunity to be heard and to receive a meaningful assessment of whether he is dangerous or likely to abscond.” *Id.* at *4.

65. Mr. Sanchez-Lemus's history of compliance with release conditions, longstanding residence in the United States, and strong family and community ties demonstrate that individualized review is particularly important to reduce the risk of erroneous detention.

3. GOVERNMENT’S INTEREST

66. Regardless of the government’s purported interest in enforcing its interpretation of the immigration detention statutes, a habeas petitioner’s “constitutional interest in his liberty exists above and apart from the INA.” *Rojas*, 2025 WL 3038262 at *4 (citing *A.A.R.P. v. Trump*, 605 U.S. 91, 94 (2025) (“[T]he Fifth Amendment entitles aliens to due process of law in the context of removal proceedings.”)). Further, while the government “has an interest in ensuring that noncitizens appear for their removal hearings and do not pose a danger to the community,” such interest “would be squarely addressed through a bond hearing.” *Id.* (citing *Martinez v. Noem*, 2025 WL 2598379 at *4 (W.D. Tex. Sep. 8, 2025)).

Fifth Circuit Precedent on Procedural Due Process

67. Federal courts in the Fifth Circuit have repeatedly granted release on procedural due process grounds. Here is a list of a few helpful cases to reference in drafting a procedural due process argument:

- *Hassen v. Noem*, 3:26-cv-00048-DB (W.D. Tex. Feb. 9, 2026)¹
- *Clemente Ceballos v. Garite*, 3:26-cv-00312-DB (W.D. Tex. Feb 10, 2026)²
- *Santiago v. Noem*, 2025 WL 2792588 (W.D. Tex. Oct. 2, 2025)
- *Hernandez-Fernandez v. Lyons*, 2025 WL 2976923 (W.D. Tex. Oct. 21, 2025)
- *Parada-Hernandez v. Johnson*, 2025 WL 3465958 (N.D. Tex. Oct. 29, 2025),
report and recommendation adopted, 2025 WL 3463682 (N.D. Tex. Dec. 2, 2025)
- *Rojas v. Noem*, 2025 WL 3038262 (W.D. Tex. Oct. 30, 2025)
- *De Leon Hernandez v. Bondi*, 2025 WL 3217037 (W.D. La. Nov. 18, 2025)
- *Chinchilla v. De Anda-Ybarra*, 2025 WL 3645178 (W.D. Tex. Dec. 16, 2025)
- *Vieira v. De Anda-Ybarra*, 2025 WL 2937880 (W.D. Tex. Oct. 16, 2025)
- *Cruz-Reyes v. Bondi*, (S.D. Tex. Feb. 3, 2026)
- *Singh v. Taylor*, 2026 WL 360913 (W.D. Tex. Feb. 9, 2026)
- *Aguila v. Warden, ERO El Paso Camp East Montana*, (W.D. Tex. Feb. 9, 2026)

COUNT II

VIOLATION OF 8 U.S.C. § 1226(a)

UNLAWFUL DENIAL OF RELEASE ON BOND

68. Petitioner re-alleges and incorporates herein by reference every allegation set forth in the preceding paragraphs.

69. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of

¹ Granting habeas relief after acknowledging the Fifth Circuit's precedential decision in *Buenrostro-Mendez v. Bondi* and noting the case "does not change the case's outcome on procedural due process grounds."

² Same as footnote 1.

inadmissibility. As relevant here, § 1225(b)(2) does not apply to those persons Respondents previously determined should be detained and released under § 1226(a). Further, 8 U.S.C. § 1225(b)(2) does not justify cancellation of a bond or release order issued under 8 U.S.C. § 1226(a).

70. Nonetheless, Respondents have adopted a policy and practice of re-interpreting the detention and release statutory scheme in the INA.

71. The unlawful application of 8 U.S.C. § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates the INA.

COUNT II

VIOLATION OF 8 U.S.C. § 1226(a)

UNLAWFUL DENIAL OF RELEASE ON BOND

72. Petitioner re-alleges and incorporates herein by reference every allegation set forth in the preceding paragraphs.

73. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, § 1225(b)(2) does not apply to those persons Respondents previously determined should be detained and released under § 1226(a). Further, 8 U.S.C. § 1225(b)(2) does not justify cancellation of a bond or release order issued under 8 U.S.C. § 1226(a).

74. Nonetheless, Respondents have adopted a policy and practice of re-interpreting the detention and release statutory scheme in the INA.

75. The unlawful application of 8 U.S.C. § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates the INA.

COUNT III

VIOLATION OF BOND REGULATIONS

8 C.F.R. §§ 236.1, 1232.1 and 1003.19

UNLAWFUL DENIAL OF RELEASE ON BOND

76. Petitioner re-alleges and incorporates herein by reference every allegation set forth in the preceding paragraphs.

77. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of “Apprehension, Custody, and Detention of [Noncitizens],” the agencies explained that “[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) *will be eligible for bond and bond redetermination.*” 62 Fed. Reg. at 10323 (emphasis added). The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.

78. Nonetheless, Respondents have adopted a policy and practice of applying 8 U.S.C. § 1225(b)(2) to noncitizens like Petitioner whom Respondents previously determined should be detained and released pursuant to § 1226(a).

79. The unlawful application of 8 U.S.C. § 1225(b)(2) to Petitioner unlawfully mandates her continued detention and violates 8 C.F.R. §§ 236.1, 1232.1 and 1003.19.

COUNT IV

**VIOLATION OF THE APA CONTRARY TO LAW AND ARBITRARY AND
CAPRICIOUS AGENCY POLICY**

80. Petitioner re-alleges and incorporates herein by reference every allegation set forth in the preceding paragraphs.

81. The APA provides that a “reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A).

82. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those whom Defendants-Respondents previously determined should be detained and released under 8 U.S.C. § 1226(a). Such noncitizens are detained (and released) under 8 U.S.C. § 1226(a) and are eligible for release on bond, unless they were initially placed in expedited removal proceedings pursuant to 8 U.S.C. § 1225(b)(1) or (b), or were detained under 8 U.S.C. § 1226(c) or § 1231.

83. Nonetheless, Respondents have adopted a policy and practice of applying 8 U.S.C. § 1225(b)(2) to noncitizens like Petitioner whom Respondents previously determined should be detained and released pursuant to 8 U.S.C. § 1226(a).

84. Respondents have failed to articulate reasoned explanations for their decisions, which represent changes in the agencies’ policies and positions; have considered factors that Congress did not intend to be considered; have entirely failed to consider important

aspects of the problem; and have offered explanations for their decisions that run counter to the evidence before the agencies.

85. The application of 8 U.S.C. § 1225(b)(2) to Petitioner is arbitrary, capricious, and not in accordance with law, and as such, it violates the APA. *See* 5 U.S.C. § 706(2).

COUNT V
VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT OF
THE UNITED STATES CONSTITUTION.

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

87. 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. His continued detention violates his right to substantive and procedural due process guaranteed by the Fifth Amendment to the U.S. Constitution.

88. The Due Process Clause of the Fifth Amendment to the U.S. Constitution provides that "[n]o person shall...be deprived of life, liberty, or property without due process of law." As a noncitizen who shows well over "two years" physical presence in the United States (indeed he has 20 years), Mr. Sanchez-Lemus is entitled to Due Process Clause protections against deprivation of liberty and property. *See Zadvydas*, 533 U.S. at 693 ("[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent."). Any deprivation of this fundamental liberty interest must be accompanied not only by adequate procedural protections, but also by a "sufficiently strong special justification" to outweigh the significant deprivation of liberty. *Id.* at 690.

89. This Respondent's new policy, along with the BIA's decision in Yajure-Hurtado violates the procedural due process rights of noncitizen detainees, both facially and as applied. It lacks any reference to or establishment of any procedure for challenging its invocation. The Court should find that there can be no possible application of this policy that would satisfy due process where it purports to authorize the most severe and recognized deprivation of liberty without a hint of a process to challenge such deprivation. In contrast, as the Supreme Court in Demore highlighted in upholding the mandatory detention of a noncitizen convicted of a crime under § 1226(c), "process" has been built into that mandatory detention scheme. For example, § 1226(c) applies to detainees whose convictions were generally "obtained following the full procedural protections [the] criminal justice system offers." Demore v. Kim, 538 U.S. 510, 513 (2003); *id.* at 525 n.9, (noting that "respondent became 'deportable' under § 1226(c) only following criminal convictions that were secured following full procedural protections"). And if mandatory detention becomes unnecessarily prolonged in that context, the due process' prohibition of arbitrary government detention could entitle a detainee "to an individualized determination as to his risk of flight and dangerousness if the continued detention became unreasonable or unjustified." *Id.* at 532 (Kennedy, J., concurring). Detention pursuant to the automatic stay after the government already failed to establish a justification for it, with no process afforded to challenge the detention as arbitrary, is facially violative of procedural due process.

90. The Fifth Amendment guarantees that no person shall be deprived of liberty 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

Clause protects.” Zadvydas v. Davis, 533 U.S. 678, 690 (2001). “Government detention violates the Due Process Clause unless it is ordered in a criminal proceeding with adequate procedural safeguards, or in certain special and non-punitive circumstances ‘where a special justification ... outweighs the individual's constitutionally protected interest in avoiding physical restraint.’ ” Zavala v. Ridge, 310 F. Supp. 2d 1071, 1076 (N.D. Cal. 2004) (quoting Kansas v. Hendricks, 521 U.S. 346, 356 (1997)).

91. Here, the DHS, affirmed by the BIA, has determined, improperly, that all persons present in the U.S. who entered without admission are ineligible for bond. It is thus a foregone conclusion that the BIA will affirm the IJ’s decision here, and find Petitioner ineligible for bond. Like the accused in criminal cases, habeas is proper. See Moore v. Dempsey, 261 U.S. 86 (1923); Johnson v. Zerbst, 304 U.S. 458 (1938); Burns v. Wilson, 346 U.S. 137, 154 (1953).

COUNT VI
MALDONADO BAUTISTA V. SANTACRUZ

92. Under Maldonado Bautista v. Santacruz, the relevant inquiry for determining the statutory basis of detention is the Petitioner’s most recent arrest and custody determination, not the historical fact of his entry into the United States.

93. Here, Petitioner entered the United States without inspection on January 28 2006. Critically, however, DHS did not apprehend Petitioner upon arrival.

94. Petitioner’s current detention arises solely from DHS’s arrest in the interior of the United States, long after his entry. Under Maldonado Bautista, detention authority must be assessed based on the circumstances of this most recent arrest, which constitutes the operative deprivation of liberty.

95. Section 1225(b)(2) applies only to individuals who are apprehended “upon arrival” or who are “seeking admission” at the time DHS exercises custody authority. Applying § 1225(b)(2) to Petitioner—who was previously released under § 1226(a) and later re-detained in the interior—impermissibly transforms “apprehended upon arrival” into a perpetual status, a reading expressly rejected by *Maldonado Bautista*.

96. Petitioner remains detained, if at all, under 8 U.S.C. § 1226(a) and is entitled to an individualized bond hearing before an Immigration Judge.

PRAYER FOR RELIEF

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

- A. Assume jurisdiction over this matter;
- B. Order Respondents to Show Cause why this Petition should not be granted within seventy-two hours;
- C. Issue an Order preventing Respondents from removing Petitioner from the United States without notice and an opportunity to be heard;
- D. Declare that Petitioner’s detention violates the Due Process Clause of the Fifth Amendment;
- E. Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately.
- F. In the alternative, order Respondents to conduct a Constitutional hearing before an independent examiner where the Government bears the burden of proof to demonstrate by clear and convincing evidence why Petitioner should not be released and whether Petitioner presents a flight risk or a danger to the community.
- G. Award reasonable attorney’s fees and costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412; and

H. Grant any further relief this Court deems just and proper.

Dated: February 20th, 2026

Respectfully Submitted,

/s/ DAVID H. SQUARE

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

I represent Petitioner, Nelson Yovani Sanchez Lemus, 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 February 20th 2026.

/s/ David H. Square
David H. Square, Esq.

CERTIFICATE OF SERVICE

I hereby certify that on February 20, 2025, I caused the foregoing document to be electronically filed with the Clerk of the Court for the United States District Court for the Western District of Texas by using the CM/ECF system.

/s/ David H. Square
David H. Square