UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

CRISTIAN MANUEL RODRIGUEZ ALVAREZ, c/o Seneca County Jail 3040 S. State Route 100 Tiffin, OH 44883, Petitioner, v. KRISTI NOEM, Secretary, United States Department of Homeland Security, 2707 Martin Luther King Jr. Avenue, S.E. Washington, DC 20528, and JOHN H. WISSEL, Deportation Officer United States Immigration and Customs Enforcement Columbus Field Sub-Office 675 Brooksedge Boulevard Westerville, OH 43081, Respondents.	:	Case No. 2:26-cv-00271 Judge Algenon L Marbley Magistrate Judge Stephanie K. Bowman

AMENDED PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR EMERGENCY INJUNCTIVE RELIEF

Now comes the Petitioner, Cristian Manuel Rodriguez Alvarez by and through his attorney, Constance A. Gadell-Newton, and hereby petitions this Honorable Court to issue a Writ of Habeas Corpus to review his unlawful detention in violation of his constitutional and statutory rights.

INTRODUCTION

1. Petitioner is presently being detained by Enforcement and Removal Operations ("ERO") officials of the United States Immigration and Customs Enforcement ("ICE") at the Seneca County

Jail, located at 3040 S. State Route 100 in Tiffin, Ohio.

2. Petitioner had a bond hearing, but the Immigration Judge refused to grant an immigration bond to the Petitioner. The Immigration Judge erroneously ruled that he lacked jurisdiction to consider releasing Petitioner on bond.

3. Petitioner is a native and citizen of Venezuela, and has been present in the United States since 2023, when he came to the United States at 25 years of age. He has no criminal history.

4. Petitioner's other family members are present in the United States. Petitioner's detention is a substantial deprivation and burden that puts Petitioner and his family at risk without his support.

5. Petitioner's detention became unlawful on January 30, 2026, when he was taken into custody by ICE/ERO officials. His continued detention is a violation of due process and is based on an incorrect interpretation of immigration law.

6. Petitioner was initially detained on January 30, 2026 following a traffic stop in Tiffin, Ohio. Petitioner was leaving his place of employment when he was stopped by Tiffin police officers because his vehicle's muffler was causing excessive noise. The stop was not related to any criminal activity, nor was the Respondent suspected of any wrongdoing beyond the vehicle equipment issue.

7. In Maldonado Bautista v. Santacruz, No. 5:25-CV-01873, 2025 WL 3289861, at *11 (C.D. Cal., Nov. 20, 2025), the district court certified a nationwide Bond Denial Class that encompasses the Petitioner, granted declaratory judgment to the Bond Denial Class members finding that they are detained under 8 U.S.C. §1226(a), and ordered that 8 U.S.C. §1225(b)(2)(A) cannot be used to deny Bond Denial Class members consideration for release on bond.

8. Respondents are bound by the order in *Maldonado Bautista* because it has the full "force and effect of a final judgment" under 28 U.S.C. §2201(a), but Respondents are defying the order in that

case and continue subjecting Petitioner to unlawful detention despite his clear entitlement to consideration for release on bond as a Bond Eligible Class member.

9. Respondents are detaining Petitioner in violation of the order issued in *Maldonado Bautista.*

10. Therefore, this Court should issue a temporary restraining order prohibiting Respondents' continued detention of Petitioner, directing Petitioner's release for the remainder of his removal proceedings, or, in the alternative, remanding Petitioner's bond hearing to the Immigration Judge with a declaratory judgment clarifying the Immigration Judge's jurisdiction over immigration bonds and authority to grant Petitioner an immigration bond.

11. To protect Petitioner's due process rights, this Court should order the Respondents to have the Immigration Judge hold a new bond hearing for the Petitioner within seven (7) days, under 8 U.S.C. §1226(a), because the Immigration Judge erroneously ruled at Petitioner's previous bond hearing that he lacked jurisdiction to consider releasing Petitioner on bond.

12. Alternatively, Petitioner requests that the Court order Respondents to show cause why this Petition should not be granted within three days pursuant to 28 U.S.C. §2243.

JURISDICTION AND VENUE

13. This action arises under the Constitution of the United States, the Immigration and Nationality Act of 1952 ("INA") as amended; 8 U.S.C. §1101, *et seq.*; and 5 U.S.C. §701, *et seq.* of the Administrative Procedure Act ("APA").

14. This Court has habeas corpus jurisdiction under 28 U.S.C. §2241, and Article I, section 9, clause 2 of the United States Constitution (the "Suspension Clause"), as the Petitioner is presently subject to immediate detention and custody under color of authority of the United States government, and such custody is being exercised in violation of the Constitution, laws, or treaties of the United States.

15. This action is brought to compel the Respondents, who are officers of the United States, to afford the Petitioner due process of law that he is entitled to under the Fifth and Fourteenth Amendments to the United States Constitution.

16. This Court is empowered to grant relief under 28 U.S.C. §2241, 28 U.S.C. § 2201, *et seq.*, (the Declaratory Judgment Act), 28 U.S.C. §1331 (federal question jurisdiction), 28 U.S.C. §1361 (mandamus), and 28 U.S.C §1651 (the All Writs Act).

17. Under 28 U.S.C. §1391(b) and §1391(e)(1), venue is proper in this District because the Respondents are subject to the Court's personal jurisdiction with respect to this action and maintain an office in the Southern District of Ohio.

PARTIES

18. The Petitioner, Cristian Manuel Rodriguez Alvarez, is a native and citizen of Venezuela and is presently being detained by Enforcement and Removal Operations ("ERO") officials of the United States Immigration and Customs Enforcement ("ICE") at the Seneca County Jail, located at 3040 S. State Route 100 in Tiffin, Ohio.

19. Respondent Kristi Noem has been sued in her official capacity only. Pursuant to the Homeland Security Act of 2002, Pub. L. 107-296, Respondent Noem and her delegates have broad authority over the operation and enforcement of the immigration laws. Since then, Respondent Noem has purportedly been removed as Secretary of the Department of Homeland Security and Markwayne Mullin has been nominated as her successor, who will be substituted as a Respondent under Fed. R. Civ. P. 25(d) upon his confirmation.

20. Respondent John H. Wissel is being sued in his official capacity only, as Deportation Officer in the ICE/ERO Columbus Field Sub-Office. He is charged with the detention and removal of aliens who fall under the jurisdiction of the ICE/ERO Columbus Field Sub-Office.

CUSTODY

21. The Petitioner, Cristian Manuel Rodriguez Alvarez, is being unlawfully detained by ICE/ERO and he is not likely to be removed in the reasonably foreseeable future.

FACTUAL AND PROCEDURAL BACKGROUND

22. The Petitioner, Cristian Manuel Rodriguez Alvarez, is a native and citizen of Venezuela. He first entered the United States in 2004 as a noncitizen and has remained ever since.

23. Petitioner's family members live in the United States. Petitioner has no criminal history.

24. Petitioner is a noncitizen, is in removal proceedings, and was issued a Notice to Appear.

25. Petitioner was then detained by ICE/ERO as described above, and was taken to the Seneca County Jail, located at 3040 S. State Route 100 in Tiffin, Ohio.

26. On September 5, 2025, the Board of Immigration Appeals ("BIA") issued a decision in Matter of Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025), declaring for the first time that any person who crossed the border unlawfully and is later taken into immigration detention is no longer eligible for release on bond.

27. Just three (3) months earlier, in Matter of Akhmedov, 29 I&N Dec. 166 (BIA 2025), the BIA ruled that an Immigration Judge had the power to grant release on bond under INA §236(a) if the person did not have a disqualifying criminal record and the judge was satisfied, after a hearing, that the person was not a danger to the community or a flight risk.

28. ICE had a longstanding practice of treating noncitizens taken into custody while living in the United States as being detained under 8 U.S.C. §1226. See Rocha Rosado v. Figueroa, 2025 WL 2337099 (D. Ariz., Aug. 11, 2025). See also Loper Bright Enter. v. Raimondo, 603 U.S. 369, 386 (2024) ("[T]he longstanding practice of the government—like any other interpretive aid—can inform [a court's] determination of what the law is."). According to 8 U.S.C. §1226(a)(2), a person

in ICE custody could be released on bond "of at least $1,500" or on "conditional parole".

29. On July 8, 2025, ICE changed its longstanding interpretation of which noncitizens are eligible for release. Now, ICE's position is that only those persons already admitted to the United States are eligible to be released from custody during their removal proceedings, and all others are subject to mandatory detention under 8 U.S.C. §1225, remaining in detention with only extremely limited parole options at ICE's discretion.

30. Petitioner had a bond hearing, but the Immigration Judge erroneously ruled that he lacked jurisdiction to consider releasing Petitioner on bond, citing *Yajure Hurtado*. This is error because *Maldonado Bautista* holds that persons such as the Petitioner cannot be denied consideration for release on bond. Accordingly, the Immigration Judge does indeed have jurisdiction to consider releasing the Petitioner on bond.

31. Petitioner's continued detention under *Yajure Hurtado* separates him from his family, counsel, and support system; prohibits him from being able to financially provide for his family; and inhibits his removal defense by making it difficult to communicate with witnesses, making it difficult to gather evidence, and impeding legal representation along with other related harm.

32. There is little likelihood that Petitioner's detention will end in the reasonably foreseeable future.

LEGAL FRAMEWORK

Due Process Clause

33. 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 Peso v. Flores, 507 U.S. 292, 306 (1993)). Also, "[f]reedom 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).

34. In immigration matters, the Supreme Court only recognizes two purposes for civil detention: preventing flight and mitigating the risks of danger to the community. Zadvydas, 533 U.S. at 690; Demore, 538 U.S. at 528. A noncitizen may only be detained on these two justifications if they are otherwise statutorily eligible for bond. Zadvydas, 533 U.S. at 690.

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

Detention Provisions under the Immigration and Nationality Act

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

37. The INA authorizes detention for noncitizens under four distinct provisions:

a. **Discretionary Detention:** 8 U.S.C. §1226(a) generally allows for the detention of noncitizens who are in regular, non-expedited removal proceedings, but permits those noncitizens who are not subject to mandatory detention to be released on bond or on their own recognizance.

b. **Mandatory Detention of "Criminal" Noncitizens:** 8 U.S.C. §1226(c) generally requires the mandatory detention of noncitizens who are removable because of certain criminal or terrorist-related activity after they have been released from criminal incarceration.

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

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

38. This case concerns the detention provisions of §§1226(a) and 1225(b). Detention provisions of both §§1226(a) and 1225(b) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") of 1996, Pub. L. No. 104—208, Div. C, §§ 302-03, 110 Stat. 3009-546, 3009-582 to 3009-583, 3009-585.[1]

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

40. The legislative history behind §1226 also demonstrates that it governs noncitizens, like the Petitioner, who were deemed inadmissible upon inspection at the border, released into the United States at the border after being placed into removal proceedings, and were present in the United States for a number of years prior to being taken into detention. Before passage of the Immigration Reform

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

and Immigrant Responsibility Act ("IRIRA"), the predecessor statute to §1226(a) governed deportation proceedings for all noncitizens arrested within the United States and, like §1226(a), included a provision allowing for discretionary release on bond.[2] After passing the IIRIRA, Congress declared that the new §1226(a) "restates the current provisions in [the predecessor statute] regarding the authority of the Attorney General to arrest, detain, and release on bond" a noncitizen "who is not lawfully in the United States." H.R. Rep. No. 104-469, pt. 1, at 229. See also H.R. Rep. No. 104-828, at 210. Since noncitizens like the Petitioner were entitled to discretionary detention under the predecessor statute to §1226(a), and Congress declared the statute's scope unchanged by IIRIRA, this Court should interpret §1226 to allow a discretionary release on bond for noncitizens similarly situated to the Petitioner.

41. On September 5, 2025, the Board of Immigration Appeals issued its decision in *Yajure Hurtado*, and declared for the first time that any person who crossed the border unlawfully and later taken into immigration detention is no longer eligible for release on bond.

42. This decision ignores decades of immigration law and precedent by the Supreme Court, as well as the policies and procedures that had been in place prior to EOIR for more than 30 years.

43. In Jennings v. Rodriguez, 583 U.S. 281, 287 (2018), the Supreme Court analyzed the statutory sections at issue here, 8 U.S.C. §§1225 and 1226. The Court held that §1225(b) "applies primarily to aliens seeking entry into the United States." Id., 583 U.S. at 297. Then, the Court said that §1226 "applies to aliens already present in United States." Id., 583 U.S. at 303.

44. The Court specifically found that "Section 1226(a) creates a default rule for those aliens by

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

permitting—but not requiring—the Attorney General to issue warrants for their arrest and detention pending removal proceedings. Section 1226(a) also permits the Attorney General to release those aliens on bond, 'except as provided in subsection (c) of this section'." Jennings, 583 U.S. at 303. Subsection (c) pertains to aliens who fall into categories involving criminal offenses or terrorist activities. Also, "Federal regulations provide that alien detained under §1226(a) receive bond hearings at the outset of detention." Id., 583 U.S. at 306. See also 8 CFR 236.1(d)(1), 1236.1(d)(1).

45. The Supreme Court's analysis in Jennings demonstrates the difference between detention of arriving aliens who are seeking entry into the United States under §1225 and the detention of those who are already present in the United States under §1226.

46. The BIA's erroneous interpretation of the INA defies the plain text of 8 U.S.C. §§1225 and 1226. A key phrase in §1225(b)(2)(A) states that, "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this Title." In other words, mandatory detention applies when "the individual is: (1) an 'applicant for admission'; (2) 'seeking admission'; and (3) 'not clearly and beyond a doubt entitled to be admitted'." Martinez v. Hyde, 2025 WL 2084238, at *2 (D. Mass., Jul. 24, 2025).

47. The "seeking admission" language necessarily implies some sort of present tense action. Martinez, 2025 WL 2084238, at *6. See also Matter of M-D-C-V-, 28 I&N Dec. 18, 23 (BIA 2020) ("The use of the present progressive tense 'arriving', rather than the past tense 'arrived,' implies some temporal or geographic limit . . ."); United States v. Wilson, 503 U.S. 329, 333 (1992) ("Congress' use of verb tense is significant in construing statutes").

48. The plain language of §1225 applies to immigrants currently seeking admission into the United States at the nation's border or another point of entry. It does not apply to noncitizens "already

present in the United States" because only §1226 applies in those cases. Jennings, 583 U.S. at 303.

49. When interpreting a statute, "every clause and word . . . should have meaning." United States ex rel. Polansky, M.D. v. Exec. Health Res., Inc., 599 U.S. 419, 432 (2023). The words of the statute "must be read in their context and with a view to their place in the overall statutory scheme." Gundy v. United States, 588 U.S. 128, 141 (2019).

50. The *Yajure Hurtado* decision requires this Court to ignore critical provisions of the INA, and it also renders portions of the newly enacted provisions of the INA superfluous. It violates the principle that, "[w]hen Congress amends legislation, courts must presume it intends its amendment to have real and substantial effect." Van Buren v. United States, 593 U.S. 374, 393 (2021).

51. Congress passed the Laken Riley Act (the "Act") in January 2025. The Act amended several provisions of the INA, including §§1225 and 1226. Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025). Moreover, the Act added a new category of noncitizens subject to mandatory detention under §1226(c)—those already present in the United States who have also been arrested, charged with, or convicted of certain crimes. 8 U.S.C. §1226(c)(1)(E); 8 U.S.C. §1182(a)(6)(A). The government's position is that these individuals are already subject to mandatory detention under §1225, but it renders the amendment superfluous. Also, mandatory detention exceptions under §1226(c) are meaningful only if there is a default of discretionary detention—and there is under §1226(a). Rodriguez, 2025 WL 1193850, at *12.

52. When Congress adopts a new law against the backdrop of longstanding administrative construction, a court "generally presumes the new provision should be understood to work in harmony with what has come before." Monsalvo v. Bondi, ___ U.S. ___, 145 S.Ct. 1232, 1242 (2025). Congress adopted the Laken Riley Act after decades of agency practice applying §1226(a) to immigrants like the Petitioner, who are present in the United States but have not been admitted or

paroled. Rodriguez, 2025 WL 1193850, at *15; Martinez, 2025 WL 2084238, at *4.

53. Section 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." Removal hearings for noncitizens under 1226(a) are held under §1229a, which "decid[e] the inadmissibility or at deportability of a [noncitizen]." By contrast, §1225(b) applies to people arriving U.S. ports of entry or who recently entered the United States.

54. The BIA's reasoning in *Yajure Hurtado* has been rejected by district courts across the country. See, e.g. Jose J.O.E. v. Bondi, 2025 WL 2466670 (D. Minn., Aug. 27, 2025); Aguilar Maldonado v. Olson, 2025 WL 2374411 (D. Minn., Aug. 15, 2025); Carmona-Lorenzo v. Trump, 2025 WL 2531521 (D. Neb., Sept. 3, 2025); Cortes Fernandez v. Lyons, 2025 WL 2531539 (D. Neb., Sept. 3, 2025); Palma Perez v. Berg, 2025 WL 2531566 (D. Neb., Sept. 3, 2025); Jacinto v. Trump, 2025 WL 2402271 (D. Neb., Aug. 19, 2025); Garcia Jimenez v. Kramer, 2025 WL 2374223 (D. Neb., Aug. 14, 2025); Anicasio v. Kramer, 2025 WL 2374224 (D. Neb., Aug. 14, 2025); Arce v. Trump, 2025 WL 2675934 (D. Neb., Sept. 18, 2025); Giron Reyes v. Lyons, 2025 WL 2712427 (N.D. Iowa, Sept. 23, 2025); Sampiao v. Hyde, 2025 WL 2607924 (D. Mass., Sept. 9, 2025) (addressing *Yajure Hurtado* and finding that the BIA's analysis is incorrect); Jimenez v. FCI Berlin, No. 25-cv-326 (D.N.H. Sept. 8, 2025); Doe v. Moniz, 2025 WL 2576819 (D. Mass., Sept. 5, 2025); Romero v. Hyde, 2025 WL 2403827 (D. Mass., Aug. 19, 2025); dos Santos v. Noem, 2025 WL 2370988 (D. Mass., Aug. 14, 2025); Gomes v. Hyde, 2025 WL 1869299 (D. Mass., Jul. 7, 2025); Choglio Chafla v. Scott, 2025 WL 2688541 (D. Me., Sept. 21, 2025); Chiliquinga Yumbillo v. Stamper, 2025 WL 2688160 (D. Me. Sept. 19, 2025); Lopez Benitez v. Francis, 2025 WL 2371588 (S.D.N.Y., Aug. 13, 2025); Samb v. Joyce, 2025 WL 2398831 (S.D.N.Y., Aug. 19, 2025): Leal-Hernandez v. Noem, 2025 WL 2430025 (D. Md., Aug. 24, 2025); Kostak v. Trump, 2025 WL 2472136 (W.D. La., Aug. 27, 2025); Lopez-Arevelo v.

Ripa, 2025 WL 2691828 (W.D. Tex., Sept. 22, 2025); Hasan v. Crawford, 2025 WL 2682255 (E.D. Va., Sept. 19, 2025); Beltran Barrera v. Tindall, 2025 WL 2690565 (W.D. Ky., Sept. 19, 2025); Singh v. Lewis, 2025 WL 2699219 (W.D. Ky., Sept. 22, 2025); Pizarro Reyes v. Raycraft, 2025 WL 2609425 (E.D. Mich., Sept. 9, 2025); Lopez-Campos v. Raycraft, 2025 WL 2496379 (E.D. Mich., Aug. 29, 2025); Rodriguez v. Bostock, 779 F.Supp.3d 1239 (W.D. Wash. 2025); Cuevas Guzman v. Andrews, 2025 WL 2617256 (E.D. Cal., Sept. 9, 2025); Caicedo Hinestroza v. Kaiser, 2025 WL 2606983 (N.D. Cal., Sept. 9, 2025); Zaragoza Mosqueda v. Noem, 2025 WL 2591530 (C.D. Cal., Sept. 8, 2025); Hernandez Nieves v. Kaiser, 2025 WL 2533110 (N.D. Cal., Sept. 3, 2025); Garcia v. Noem, 2025 WL 2549431 (S.D. Cal., Sept. 3, 2025); Arrazola- Gonzalez v. Noem, 2025 WL 2379285 (C.D. Cal., Aug. 15, 2025); Lepe v. Andrews, 2025 WL 2716910 (E.D. Cal., Sept. 23, 2025); Jabara Oliveros v. Kaiser, 2025 WL 2677125 (N.D. Cal., Sept. 18, 2025); Castellanos v. Kaiser, 2025 WL 2689853 (N.D. Cal., Sept. 18, 2025); Leon Espinoza v. Kaiser, 2025 WL 2675785 (E.D. Cal., Sept. 18, 2025); Alvarez Martinez v. Noem, 2025 WL 2598379 (W.D. Tx., Sept. 8, 2025) (finding that §1225 does not apply). See also Inspection and Expedited Removal of Aliens, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) (explaining that "[d]espite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination").

55. This Court should not give deference to *Yajure Hurtado*. The Supreme Court made it clear in *Loper Bright* that "[c]ourts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority", and also that courts "may not defer to an agency interpretation of the law simply because a statute is ambiguous." Loper Bright, 603 U.S. at 412. Instead, this Court should look to the Supreme Court's holding in *Jennings* that §1225 applies only to noncitizens "seeking admission into the country", such as new arrivals, and that §1226 applies to noncitizens

"already in the country." Id., 583 U.S. at 289.

CLAIMS FOR RELIEF

First Cause of Action: Violation of the Due Process Clause of the Fifth Amendment to the United States Constitution.

56. Petitioner repeats and incorporates by reference all allegations above as though set forth fully herein. Under the Due Process Clause, the government must show that the deprivation of a person's life, liberty, or property is justified by compelling interest. Here, there is no question that the government has deprived the Petitioner of his liberty by refusing him the opportunity request a bond hearing. The government's detention of this Petitioner is unjustified. Respondents have not demonstrated that Petitioner needs to be detained. See Zadvydas, 533 U.S. at 690 (finding immigration detention must further the twin goals of: (1) ensuring the noncitizen's appearance during removal proceedings and (2) preventing danger to the community).

57. The Petitioner can be safely released back to his community and family, and Respondents cannot make a credible argument to the contrary.

58. The *Yajure Hurtado* decision wrongly interprets the Immigration and Nationality Act.

59. This Court should not give deference to *Yajure Hurtado*. The Supreme Court made it clear in *Loper Bright* that "[c]ourts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority", and also that courts "may not defer to an agency interpretation of the law simply because a statute is ambiguous." Loper Bright, 603 U.S. at 412.

60. Instead, this Court should look to the Supreme Court's holding in *Jennings* that §1225 applies only to noncitizens "seeking admission into the country", such as new arrivals, and that §1226 applies to noncitizens "already in the country." Jennings, 583 U.S. at 289.

61. The BIA has erroneously applied *Yajure Hurtado* to take bond authority away from the Immigration Judge in Petitioner's case.

62. *Maldonado Bautista* has held that persons such as the Petitioner are being detained under 8 U.S.C. §1226(a), and that 8 U.S.C. §1225(b)(2)(A) cannot be used to deny him consideration for release on bond.

63. Petitioner is entitled to a new hearing before the Immigration Judge to consider him for release on bond, because the Immigration Judge erroneously ruled at Petitioner's previous bond hearing that he lacked jurisdiction to consider releasing Petitioner on bond under the *Yajure Hurtado* decision.

64. Petitioner's purported mandatory detention violates his right to due process and is therefore unconstitutional under the Fifth Amendment to the United States Constitution. Applying §1225(b)(2)(A) to the Petitioner instead of §1226(a) is legally erroneous and has caused Respondents to violate his constitutional rights.

Second Cause Of Action: Violation of the Immigration and Nationality Act.

65. Petitioner restates each and every allegation contained in Paragraphs 1 through 60, inclusive, of this Petition as if fully rewritten herein.

66. Petitioner has been detained and is being wrongfully denied consideration for release on bond by the Immigration Judge by application of the *Yajure Hurtado* decision, which has been clearly overturned by *Maldonado Bautista*.

67. Mandatory detention under 8 U.S.C. §1225(b)(2) does not apply to the Petitioner simply because he is a noncitizen who previously entered and has been residing in the United States prior to being apprehended.

68. *Maldonado Bautista* has held that Petitioner is being detained under 8 U.S.C. §1226(a), and that 8 U.S.C. §1225(b)(2)(A) cannot be used to deny him consideration for release on bond.

69. Petitioner is not rendered ineligible for bond by operation of §1225(b)(1), §1226(c), or §1231.

70. The BIA has wrongly decided *Yajure Hurtado* to make noncitizens such as Petitioner subject

to mandatory detention under §1225(b)(2).

71. The application of §1225(b)(2) to the Petitioner by operation of the *Yajure Hurtado* decision violates the INA.

Third Cause Of Action: Violation of the Eighth Amendment to the United States Constitution.

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

73. The Eighth Amendment provides that "excessive bail" shall not be required.

74. Noncitizens in the United States are protected by the Eighth Amendment because "all persons within the territory of the United States are entitled to the protection" of the Constitution. Zadvydas, 533 U.S. at 694.

75. The Excessive Bail Clause applies to civil immigration proceedings. Reid v. Donelan, 390 F.Supp.3d 201, 225 (D.Mass. 2019).

76. The Eighth Amendment forbids excessive bail to prevent bail being set so high that the level itself (rather than the reasons that might properly forbid release on bail) prevents provisional release. Carlson v. Landon, 342 U.S. 524, 545 (1952). That rationale applies *a fortiori* to a refusal to hold any bail hearing at all.

77. Respondents are denying Petitioner his Eighth Amendment rights against excessive bail by refusing to consider releasing Petitioner on bond.

PRAYER FOR RELIEF

The Petitioner, Cristian Manuel Rodriguez Alvarez, respectfully requests that this Honorable Court:

a. Accept jurisdiction over this action;

b. Declare that Respondents' actions to detain the Petitioner violate the Due Process Clause of

the Fifth Amendment, violate the Eighth Amendment prohibition against excessive bail, and violate the Immigration and Nationality Act;

c. Issue a writ of habeas corpus, pursuant to 28 U.S.C. §2241, and: (1) order the Petitioner's immediate release, or (2) order that Respondents have the Immigration Judge accept jurisdiction and schedule a bond hearing for Petitioner within five (5) days of said order;

d. Award reasonable attorneys' fees and costs for this action; and

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

Dated: March 9, 2026

Respectfully Submitted,

/s/Constance A. Gadell-Newton

Constance A. Gadell-Newton
(Ohio Reg. No. 0085373)
FITRAKIS & GADELL-NEWTON, LLC
100 E. Main Street
Columbus, OH 43215
Phone: (614) 307-9783
Fax: (614) 929-3513
E-Mail: fgnlegal@fgnlegal.com

Attorney for Petitioner
Cristian Manuel Rodriguez Alvarez