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UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

PEREZ-PEREZ, Gonzalo [redacted] Petitioner, v. **PAMELA BONDI**, U.S. Attorney General U.S. Secretary of Homeland Security ("DHS") **TODD LYONS**, Acting Director U.S. Immigration and Customs Enforcement, **ROBERT GUADIAN,** Acting Denver Field Office Director **JUAN BALTAZAR**, Warden of Denver Contract Detention Facility Processing Center IN THEIR OFFICIAL CAPACITIES Respondents.	Case No.: 1:26-cv-1158 PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner, GONZALO PEREZ-PEREZ, is in the physical custody of Respondents at the Denver Contract Detention Facility in Aurora, Colorado. Petitioner was apprehended as the passenger of a car and arrested with no accompanying traffic or criminal citations or charges. After residing in the United States for 25 years, Petitioner has now been unlawfully detained by Respondents since November 8, 2025: over 132 days. *See* **Exhibit A**, ICE Detainee Locator.

2. Petitioner is charged with, inter alia, having entered the United States without admission or inspection. *See* 8 U.S.C. § 1182(a)(6)(A)(i).

3. Based on this allegation in Petitioner's removal proceedings, DHS denied Petitioner release from immigration custody, consistent with a new DHS policy issued on July 8, 2025, instructing all Immigration and Customs Enforcement (ICE) employees to consider anyone inadmissible under § 1182(a)(6)(A)(i)—i.e., those who entered the United States without admission or inspection—to be subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.

4. The Fifth Amendment protects "persons" – not just citizens – from being deprived of liberty without due process of law. As established in *Zadvydas v. Davis*, 533 U.S. 678 (2001), and reaffirmed in *Demore v. Kim*, 538 U.S. 510 (2003), non-citizens in removal proceedings are entitled to constitutional due process, especially where physical liberty is at stake.

5. The Fourteenth Amendment declares that no person may be deprived of life, liberty, or property without due process of law. U.S. Const. amend. XIV, § 1. The Fourth Amendment forbids unreasonable seizures. U.S. Const. amend. IV. The Fifth Amendment binds the federal government to the same core constitutional command: no person shall be deprived

of liberty without due process of law. U.S. Const. amend. V. Those guarantees do not evaporate at the edge of the immigration statutes, nor do they disappear when the Executive relabels a person physically present in the United States as an "applicant for admission" for detention purposes. They protect all persons' liberty against precisely what has occurred here: prolonged civil imprisonment without lawful authority and without the meaningful process the Constitution demands.

6. This case concerns an immigration detainee whom the Government is unlawfully confining under its new interpretation of 8 U.S.C. § 1225(b), as amplified by the Board's recent decision in *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). In *Yajure-Hurtado*, the Board concluded that Immigration Judges lack authority to conduct bond hearings for noncitizens "present in the United States without admission" because, in the Board's view, such persons fall within the mandatory-detention command of § 1225(b)(2)(A). *Id.* at 216. That interpretation stretches the statute beyond its text, collapses the longstanding distinction between recent applicants for admission and persons already arrested within the interior of the United States, and attempts to place broad categories of human beings beyond any meaningful access to an individualized custody determination. Habeas exists precisely to test the legality of that imprisonment.

7. The modern architecture of immigration detention took shape after Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), which expanded mandatory detention in certain circumstances and revised the inspection and removal framework now codified in 8 U.S.C. §§ 1225, 1226, and 1231. After IIRIRA, courts repeatedly confronted the constitutional limits of civil immigration detention. In *Demore v. Kim*, 538 U.S. 510 (2003), the Supreme Court upheld mandatory detention for

a narrow class of noncitizens under § 1226(c), while emphasizing the sharply limited context of that holding. In *Jennings v. Rodriguez*, 583 U.S. 281 (2018), the Supreme Court treated § 1225(b) as a distinct detention regime for applicants for admission at the threshold of entry, in contrast to § 1226, which governs detention of noncitizens arrested after entry and already present within the interior of the United States. And well before that, in *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court made clear that immigration power, though substantial, remains constrained by the Constitution, because the Due Process Clause applies to all "persons" within the United States, including noncitizens, "whether their presence here is lawful, unlawful, temporary, or permanent." *Id.* at 693.

8. The *Jennings* principle controls here. Once a person is physically present in this country, the Constitution's protection of liberty is not a matter of executive grace. The Government may not seize a person, hold him in civil detention, and then insulate that detention from meaningful judicial review by invoking an overbroad reading of § 1225(b) and a newly minted administrative decision. The writ of habeas corpus remains available to test whether the government has lawful authority for the restraint. Here, it does not.

9. At stake is more than a technical dispute over detention labels. This case concerns the oldest promise of our law: that government must answer when it imprisons a human being. In this country, even in immigration matters, the government's power over borders does not extinguish the individual's right to life and liberty, or the Nation's foundational promise that government exists to secure the conditions in which human beings may live freely and pursue happiness. Petitioner has set foot in the United States. He is here. He is a person. And because he is a person, the Constitution protects him from unlawful detention.

10. The Fifth Circuit's recent decision in *Victor Buenrostro-Mendez v. Bondi, et al*, regarding mandatory detention, is not binding on this Court. The overwhelming majority of federal courts have supported Petitioner's position. *See Perez v. Parra*, Case No. 25cv24820, 6-10 (S.D. Fla) (extensively listing the district court decisions across the United States rejecting Respondents' interpretation of § 1225).

11. While 8 U.S.C. § 1225 does not explicitly state that its application is limited to ports of entry (POEs) or their immediate vicinity, this was without question the Supreme Court's understanding in *Jennings*. The Court's conclusions regarding the statute's interpretation and constitutionality relied heavily on the historically limited rights afforded to aliens at the country's borders. This was not an incidental assumption; the Supreme Court is fully cognizant of the limited constitutional rights at the border, and the government itself argued this precise distinction in support of its interpretation of § 1225 and § 1226.

12. Indeed, the Court presented the precise question this Court is being asked to answer now to the Solicitor General more than once. For example, Justice Sotomayor asked, "Clarifying question. For an alien who is found in the United States illegally, has not been admitted, are they held under 1225(b) or are they held under 1226(a)?"[1]

13. The Solicitor General responded, "So they are held under – if they are not – if they are not detained within 100 miles of the border or within 14 days... then they are under 1226(a) and not (c).[2]

[1] *See* **Exhibit B**, Jennings Oral Transcript at p. 7.

[2] (*Id.* at pp. 7-8.)

14. Seeking further clarity, Justice Sotomayor posed a hypothetical of an EWI alien stating, "I'm talking about an alien who has come into the United States illegally without being admitted who takes up residence 50 miles from the border."[3]

15. Without hesitation, the Solicitor General confirmed: "The answer is they are held under 1226(a) and that they get a bond hearing under it - - and this is at page 156a of the appendix."[4]

16. As will be discussed further below, the simple reality is that the Supreme Court and all the litigants in *Jennings* recognized that § 1225 is a statute applicable at or near the border, and therefore, the warrant requirement of the Fourth Amendment and the due process clause of the Fifth Amendment have little or no application.

17. In *Mathews v. Eldridge*, 424 U.S. 319 (U.S. 1976), the Supreme Court acknowledged that due process is flexible and calls for such procedural protections as the particular situation demands. Accordingly, resolution of the issue whether the administrative procedures are constitutionally sufficient requires analysis of the governmental and private interests that are affected:

    a. **The private liberty interest that is affected by the official action**. Here, a 39-year-old family man and father of 2 young U.S. citizen children has been detained for over 145 days. His common-law wife, Gladys Leticia Hernandez Bail, was pregnant at the time of his apprehension, and is due to deliver this month. Before his detention, Petitioner was gainfully employed as a landscaper at the same company for over twelve (12) years and had filed his taxes since his arrival in the United States with a tax ID number. The private interest at stake here is great, and

[3] (*Id.* at p. 8.)

[4] (*Id.* at p. 8-9.)

each day that Petitioner misses with his family contributes to the consideration of irreparable harm.

b. **The risk of an erroneous deprivation of such interest through the procedures used, and the probable value of additional procedural safeguards.** Here, the risk of erroneous deprivation is great in an agency that is compromised by political actions over adherence to the rule of law. Time and again policy overrides law in this administration and people like Petitioner suffer the consequences. Petitioner's extended detention is a policy choice that broke the law.

c. **The government's interest, including the fiscal and administrative burden of additional procedural safeguards.** Here, additional procedural safeguards would not be a costly or time-consuming additional expense to the government's agency that is in the business of providing hearings. It is no great additional cost to add additional procedural safeguards, especially when compared against the grave private interest of Petitioner who has been detained for nearly months.

18. He now faces unlawful detention because the Department of Homeland Security ("DHS") and the Executive Office of Immigration Review ("EOIR") have concluded that Petitioner is subject to mandatory detention.

19. Petitioner is charged with, *inter alia*, having entered the United States without admission or inspection. *See* 8 U.S.C. § 1182(a)(6)(A)(i).

20. Based on this allegation in Petitioner's removal proceedings, DHS denied Petitioner release from immigration custody, consistent with a new DHS policy issued on July 8, 2025, instructing all ICE employees to consider anyone inadmissible under § 1182(a)(6)(A)(i)—i.e., those who entered the United States without admission or inspection—to be subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond. *See* **Exhibit C**, ICE Memo: Interim Guidance Regarding Detention Authority for Applications for Admission.

21. In addition, Petitioner brings this petition for a writ of habeas corpus to seek enforcement of his rights as a member of the Bond Eligible Class certified in *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (C.D. Cal.). On March 6, 2026, the Court of Appeals for the Ninth Circuit issued a Stay on bond hearings for class members outside of the Central District of California; nonetheless, Petitioner asserts his class membership and preserves the following arguments should either party decide to appeal or should the 9th Circuit reach a decision during the pendency of these proceedings.
22. On March 6, 2026, the Court of Appeals for the Ninth Circuit issued a Stay on bond hearings for class members outside of the Central District of California; nonetheless, Petitioner asserts his class membership and preserves the following arguments should either party decide to appeal or should the 9th Circuit reach a decision during the pendency of these proceedings.
23. He now faces unlawful detention because the DHS and the EOIR have refused to abide by the declaratory judgment issued on behalf of the certified class in *Maldonado Bautista v. Santacruz*.
24. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be released unless Respondents provide a constitutionally adequate bond hearing under § 1226(a) within seven days.

JURISDICTION

25. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et seq.

26. 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).

27. Jurisdiction exists despite 8 U.S.C. § 1252(g) because Petitioner is not seeking direct review of the removal order, instead Petitioner is challenging unlawful custody and removal procedure. *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 S. Ct. 1959 (2020); *INS v. St. Cyr*, 533 U.S. 289, 121 S. Ct. 2271 (2001).

28. 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., the All Writs Act, 28 U.S.C. § 1651, and the Immigration and Nationality Act, 8 U.S.C. § 1252(e)(2).

VENUE

29. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493- 500 (1973), venue lies in the United States District Court for the District of Colorado, the judicial district in which Petitioner is currently detained.

30. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the District of Colorado.

REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243

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

32. 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).

33. Petitioner is "in custody" within the meaning of 28 U.S.C. § 2241 because he is arrested and detained by Respondents at the Denver Contracting Detention Facility in Aurora, CO, pursuant to immigration detention authority. Petitioner challenges that custody as unlawful under the Constitution, federal law, and applicable treaties.

PARTIES

34. Petitioner, **GONZALO PEREZ PEREZ**, a citizen and national of Guatemala who entered the United States in approximately September 2001.

35. Respondent, **JUAN BALTAZAR**, in their official capacity as Warden of Denver Contract Detention has immediate custody over Petitioner and is responsible for his detention.

36. Respondent, **ROBERT GUADIAN**, Acting Denver Field Office Director, Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement, is responsible for the custody, detention, and removal of noncitizens within this jurisdiction.

37. Respondent, **TODD LYONS**, in their official capacity as Acting Director of the U.S. Department of Homeland Security Immigration and Customs Enforcement.

38. Respondent, _____, in their official capacity as Secretary of the U.S. Department of Homeland Security, the head of DHS, which oversees ICE and is ultimately responsible for the unlawful detention of Petitioner.

39. Respondent, **PAMELA BONDI**, in their official capacity as Attorney General of the United States, is charged with the administration and enforcement of the immigration laws and is a proper respondent under 28 U.S.C. § 2243.

STATEMENT OF FACTS

40. Petitioner is a 39-year old native and citizen of Guatemala who entered the United States in approximately September 2001. *See* **Exhibit D,** *Petitioner's Identity Documents*.

41. Upon his entry into the United States, Petitioner did not encounter the U.S. Customs and Border Protection ("CBP"), Immigration and Customs Enforcement ("ICE"), or any immigration or law enforcement authorities.

42. In the twenty-five years (25) years of his continuous physical presence in the United States, Petitioner has not committed any crimes, has raised two U.S. citizen children with another on the way, has remained gainfully employed, has paid his taxes, and has overall been an individual of impeccable moral character.

43. Petitioner's encounter with immigration enforcement authorities took place within the interior of the United States on or about November 8, 2025 in Palm Beach County, Florida. On that day, Petitioner was a passenger in a vehicle being driven by his son, when a Florida State trooper stopped the vehicle and detained Petitioner without any accompanying traffic or criminal charges. Petitioner was quickly transferred to ICE custody and has remained detained since then.

44. On December 10, 2025, Respondents filed a Notice to Appear with the immigration court charging Petitioner with inadmissibility under Section 212(a)(6)(A)(i) of the Immigration and Nationality Act as an "alien present in the United States without being admitted or paroled" and beginning removal proceedings against him. *See* **Exhibit E**, Petitioner's Notice to Appear.

45. Following Petitioner's detention by ICE, he was transferred thousands of miles from his family, friends, and legal counsel in Palm Beach County, Florida to Aurora, Colorado.
46. On January 8, 2026, Petitioner filed a motion for custody redetermination asserting his rights as a member of the *Maldonado Bautista* class action lawsuit, and his eligibility for bond under Section 236(a) of the Immigration and Nationality Act. *See* **Exhibit F,** Petitioner's Motion for Custody Redetermination.
47. On January 13, 2026, the Immigration Judge Nina Carbone asked the Department of Homeland Security if they conducted an initial custody determination. The trial attorney stated that they did not. As a result, the Immigration Judge found that she did not have jurisdiction to adjudicate the custody redetermination hearing.
48. As a result, the Immigration Judge rescheduled the bond proceedings to the next day, January 14, 2026, to allow the Department of Homeland Security an opportunity to produce documentation or information about their initial custody determination on Respondent.
49. On January 14, 2026, a different Department of Homeland Security trial attorney appeared without filing any documentation regarding the initial custody determination and stated that it was against agency policy to release those documents. This trial attorney also failed to provide information on whether an initial custody determination had been made.
50. When asked about their position on the immigration judge's jurisdiction for bond, the trial attorney responded that the immigration judge did not have jurisdiction of the bond because he was detained under section 1225(b) of the Immigration and Nationality Act, despite his apprehension within the interior of the United States many years after his initial entry. This is the position of the Board of Immigration Appeals in *Yajure-Hurtado.*

51. On the same day, January 14, 2026, the Honorable Immigration Judge issued a decision denying bond stating, "[t]he respondent did not establish that he would not be a flight risk if released from custody. See Matter of R-A-V-P-, 27 I&N Dec. 803 (BIA 2020)." *See* **Exhibit G,** Summary Order Denying Bond.

52. Petitioner, through undersigned counsel, on February 4, 2026, filed a Motion to Reconsider with the immigration judge arguing that she committed legal error in finding that Petitioner was a flight risk. The motion distinguished the facts in *Matter of R-A-V-P-* and demonstrated that Petitioner was not a flight risk pursuant to the factors in *Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006). *See* **Exhibit H**, Petitioner's Motion to Reconsider.

53. On February 13, 2026, Petitioner filed an appeal with the Board of Immigration Appeals alleging legal error. *See* **Exhibit I**, BIA Notice of Appeal.

54. On February 19, 2026, the immigration judge issued a full written decision of the order denying bond in which it was revealed as an initial matter that the Court believed it did not have jurisdiction over the Petitioner's request for bond determination because of the lack of Form I-286, Notice of Custody Determination due to the Department's assertion that Petitioner was detained under Section 235(b)(2)(A) of the INA.

55. In her denial, the immigration judge cited *Matter of Reyes*, 26 I&N Dec. 528, 530 n.7 (BIA 2025) and 8 C.F.R. §§ 1003.19(a), (h)(2)(i) to support the proposition that an immigration judge is limited to reviewing certain custody or bond determinations previously rendered by the DHS. *See* **Exhibit J**, Memorandum of Bond Decision and Order.

56. On March 11, 2026, the immigration judge issued a decision denying Petitioner's motion to reconsider solely citing *Matter of Reyes* once again and not making mention of the issue of flight risk. *See* **Exhibit K**, Order on Motion to Reconsider.

57. On March 16, 2026, Petitioner timely filed a legal brief supporting his positions before the Board of Immigration Appeals.

58. In the five (5) months that Petitioner has been detained, his health has deteriorated and he has complained of a preexisting medical condition that puts him at high risk of stroke. Petitioner, through undersigned counsel, has requested special attention and accommodations from the Denver detention facility, which have not received replies.

59. With bond denied, Petitioner now remains incarcerated pending his open removal proceedings and faces the prospect of months, or even years in immigration custody, separated from his loved ones and community.

60. As of the filing of the instant petition, Petitioner has been detained for over 131 days.

EXHAUSTION

61. Petitioner remains detained without any opportunity for release on bond. Exhaustion under 28 U.S.C. § 2241 is prudential, not jurisdictional, and other courts have repeatedly excused it where administrative review is inadequate, futile, or would cause irreparable harm. *F.-G. v. Noem, No. 25-CV-0243-CVE-MTS*, 2025 U.S. Dist. LEXIS 111539 (N.D. Okla. June 12, 2025) (declining to require exhaustion where immigration detainee was "trapped in prolonged detention without a meaningful opportunity for bond"); *Quintana Casillas v. Sessions*, No. 17-cv-01395, slip op. at 9–11 (D. Colo. 2018) (explaining that when "the question presented is purely legal and has been repeatedly mishandled administratively, exhaustion serves no useful purpose."). Here, the appellate body is the Board of

Immigration Appeals, the same body that issued the decision stripping immigration judges of their jurisdiction to hear bonds.

62. Other districts have held that habeas corpus relief was available despite a pending BIA appeal, because "[e]ach additional day of detention without a bond hearing constitutes irreparable harm that cannot be remedied after the fact" *LG v. Choate*, No. 23-cv00611, slip op. at 14 (D.N.M. 2024).

63. The BIA appeal process here exemplifies why exhaustion is unnecessary. As *Rodriguez v. Bostock* explained, while the BIA has occasionally remanded bond denials where immigration judges misapplied § 1225(b), it has declined to issue a precedential ruling. 779 F. Supp. 3d 1239, 1245 (W.D. Wash. 2025).

64. Consequently, many immigration judges continue to deny bond altogether, and appeals typically take six months or more, during which noncitizens remain detained unlawfully, with severe consequences for their health, families, and ability to defend against removal. *Id.*

65. Because Petitioner's injury is the very fact of unlawful detention without a bond hearing, administrative remedies are neither timely nor effective. Habeas corpus is the only adequate remedy.

LEGAL FRAMEWORK

66. Petitioner is cognizant of the Fifth Circuit's recent decision in *Buenrostro-Mendez v. Bondi*. That being said, Petitioner believes *Buenrostro-Mendez* was incorrectly decided and has included arguments in the instant petition in support of this position to ensure no such arguments are waived in the event of an appeal by either party. In so doing, it is important to point out that *Buenrostro-Mendez'* holding was limited to the facts and issues presented

by that case. Indeed, the noncitizens in that case were detained after their very first encounter with immigration officials, (allegedly such detention was pursuant to § 1225(b)(2)(A)), and had never been inspected, released, or otherwise come to DHS' attention. Accordingly, *Buenrostro-Mendez'* holding is limited to finding that § 1225(b)(2)(A) is applicable to noncitizens detained under those specific facts. Notwithstanding *Buenrostro-Mendez*, however, it is Petitioner's position that he is subject to detention under U.S.C. § 1226(a), and thus, is entitled to a bond hearing. Petitioner's interpretation of this issue is consistent with nearly three decades of settled agency practice and judicial interpretation. Critically, Petitioner's reading gives full effect to all the INA's provisions, including the statutory definitions given to the terms "admission," "admitted," and "application for admission," and it harmonizes the statutes, regulations, decades of agency practice, and caselaw with the U.S. Constitution.

67. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally 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).

68. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under § 1225(b)(2).

69. Last, the INA also provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)–(b).

70. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).

71. 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, 3009–582 to 3009–583, 3009–585. Section 1226(a) was most recently amended earlier this year by the *Laken Riley Act*, Pub. L. No.119-1, 139 Stat. 3 (2025).

72. Following the enactment of the IIRIRA, 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).

73. Thus, in the decades that followed, most people who entered without inspection and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

74. On July 8, 2025, ICE, "in coordination with" DOJ, announced a new policy that rejected well-established understanding of the statutory framework and reversed decades of practice.

75. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission,"[5] claims that all persons who entered the United States without inspection shall now be subject to mandatory detention provision under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended, and affects those who have resided in the United States for months, years, and even decades.

76. On September 5, 2025, the BIA adopted this same position in a published decision, *Matter of Yajure Hurtado*. There, the Board held that all noncitizens who entered the United States without admission or parole are subject to detention under § 1225(b)(2)(A) and are ineligible for IJ bond hearings.

77. Since Respondents adopted their new policies, dozens of federal courts have rejected their new interpretation of the INA's detention authorities. Courts have likewise rejected *Matter of Yajure Hurtado*, which adopts the same reading of the statute as ICE.

78. Even before ICE or the BIA introduced these nationwide policies, immigration judges in the Tacoma, Washington, immigration court stopped providing bond hearings for persons who entered the United States without inspection and who have since resided here. There, the U.S. District Court in the Western District of Washington found that such a reading of the INA is likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025).

79. Subsequently, court after court has adopted the same reading of the INA's detention authorities and rejected ICE and EOIR's new interpretation. *See e.g., Cerro Perez v. Parra,* 1:25-cv-24820, (S.D. Fla.) (compiling the following list of decisions); *Gil-Paulino v. Sec'y*

[5] *Available at* https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission.

of the U.S. Dep't of Homeland Sec., 25-cv-24292, DE 41, (S.D. Fla. Oct. 10, 2025). (respondent's interpretation of the INA "directly contravenes the statute" and "disregards decades of settled precedent"); *see also Pizarro Reyes*, 2025 WL 2609425, at *7 ("Finally, the BIA's decision to pivot from three decades of consistent statutory interpretation and call for Pizarro Reyes' detention under § 1225(b)(2)(A) is at odds with every District Court that has been confronted with the same question of statutory interpretation."); *Puga*, No. 25-24535, 2025 WL 2938369, at *3–6; *Merino v. Ripa*, No. 25-23845, 2025 WL 2941609, at *3 (S.D. Fla. Oct. 15, 2025); *Lopez v. Hardin*, No. 25-cv-830, 2025 WL 2732717, at *2 (M.D. Fla. Sep. 25, 2025); *Harsh Patel v. Crowley*, No. 25-11180, 2025 U.S. Dist. LEXIS 209958, at *9–12 (N.D. Ill. Oct. 24, 2024); *Esquivel-Ipina v. Larose*, No. 25-cv-2672, 2025 U.S. Dist. LEXIS 210275, at *9–12 (C.D. Cal. Oct. 24, 2025); *Carmona v. Noem*, No. 25-cv-1131, 2025 U.S. Dist. LEXIS 209629, at *14–17 (W.D. Mich. Oct. 24, 2025); *Lopez v. Hyde*, 25-12680, 2025 U.S. Dist. LEXIS 209916, at *4–5 (D. Mass. Oct. 24, 2025); *Guerra v. Joyce*, No. 25-cv-00534, 2025 WL 2986316, at *3 (D. Me. Oct. 23, 2025); *Lomeu v. Soto*, 25-cv-16589, 2025 WL 2981296, at *7–8 (D.N.J. Oct. 23, 2025); *Maldonado v. Cabezas*, No. 25-13004, 2025 WL 2985256, at *4 (D.N.J. Oct. 23, 2025); *Aparicio v. Noem*, 2025 U.S. Dist. LEXIS 208898, at *12–13 (D. Nev. Oct. 23, 2025); *Loa Caballero v. Baltazar,* No. 25-cv-03120, 2025 WL 2977650, at *5–6 (D. Colo. Oct. 22, 2025); *Soto v. Soto,* No. 25-cv-16200, 2025 U.S. Dist. LEXIS 207818, at *16–19 (D.N.J. Oct. 22, 2025); *Garcia v. Noem*, 25-cv-02771, 2025 U.S. Dist. LEXIS 209286, at *10–15 (C.D. Cal. Oct. 22, 2025); *Aguiar v. Moniz*, No. 25-cv-12706, 2025 WL 2987656, at *3 (D. Mass. Oct. 22, 2025); *Rivera v. Moniz*, 25-cv-12833, 2025 WL 2977900, at *1–2 (D. Mass. Oct. 22, 2025); *Avila v. Bondi*, No. 25-3741, 2025 WL 2976539, at *5–7 (D. Minn. Oct. 21,

2025); *Contreras-Lomeli v. Raycraft*, No. 25-cv-12826, 2025 U.S. Dist. LEXIS 207162, at *22 (E.D. Mich. Oct. 21, 2025); *Maldonado de Leon v. Baker*, No. 25-3084, 2025 WL 2968042, at *7 (D. Md. Oct. 21, 2025); *Casio-Mejia v. Raycraft*, No. 25-cv-13032, 2025 U.S. Dist. LEXIS 207165, at *12, 16–17 (E.D. Mich. Oct. 21, 2025); *Miguel v. Noem*, 25-11137, 2025 WL 2976480, at *6 (N.D. Ill. Oct. 21, 2025); *Pineda v. Simon*, No. 25-cv-01616, 2025 WL 2980729, at *2 (E.D. Va. Oct. 21, 2025); *Matheus Araujo DA Silva v. Bondi*, No. 25-cv-12672, 2025 WL 2969163, at *2 (D. Mass. Oct. 21, 2025); *Barahona v. Hyde*, No. 25-cv-12551, 2025 U.S. Dist. LEXIS 205964, at *4–5 (D. Mass. Oct. 20, 2025); *H.G.V.U. v. Smith,* No. 25-cv-10931, 2025 WL 2962610, at *4–6 (N.D. Ill. Oct. 20, 2025); *Gonzalez v. Hyde*, No. 25-8250, 2025 U.S. Dist. LEXIS 208578, at *10–11 (S.D.N.Y. Oct. 19, 2025); *Polo v. Chestnut*, No. 25-cv-01342, 2025 WL 2959346, at *11 (E.D. Cal. Oct. 17, 2025); *Sanchez v. Minga Wofford, Warden, Mesa Verde Immigr. Processing Ctr.*, No. 25-cv-01187, 2025 WL 2959274, at *3 (E.D. Cal. Oct. 17, 2025); *Gutierrez v. Juan Baltasar, Warden, Denver Cont. Det. Facility*, No. 25-cv-2720, 2025 U.S. Dist. LEXIS 208448, at *12–27 (D. Colo. Oct. 17, 2025); *Alvarez v. Noem*, No. 25-cv-1090, 2025 WL 2942648, at *4–6 (W.D. Mich. Oct. 17, 2025); *Zamora v. Noem*, No. 25-12750, 2025 WL 2958879, at *1 (D. Mass. Oct. 17, 2025); *Pacheco Mayen v. Raycraft*, 25-cv-13056, 2025 WL 2978529, at *6–9 (E.D. Mich. Oct. 17, 2025); *Diaz Sandoval v. Raycraft*, No. 25-cv-12987, 2025 WL 2977517, at *6–9 (E.D. Mich. Oct. 17, 2025); *Contreras-Cervantes v. Raycraft*, No. 25-cv-13073, 2025 WL 2952796, at *6–8 (E.D. Mich. Oct. 17, 2025); *Ochoa v. Noem*, No. 25-10865, 2025 WL 2938779, at *4–6 (N.D. Ill. Oct. 16, 2025); *Hernandez v. Crawford*, No. 25-cv-01565, 2025 WL 2940702, at *2 (E.D. Va. Oct. 16, 2025); *Piña v. Stamper*, No. 25-cv-00509, 2025 WL 2939298, at *3 (D. Me. Oct. 16, 2025); *Tut v. Noem*,

No. 25-cv-02701, 2025 U.S. Dist. LEXIS 204616, at *9 (C.D. Cal. Oct. 16, 2025); *Sequen v. Albarran,* No. 25-cv-06487, 2025 WL 2935630, at *8 (N.D. Cal. Oct. 15, 2025); *Teyim v. Perry,* No. 25-cv-01615, 2025 WL 2950184, at *2–3 (E.D. Va. Oct. 15, 2025); *Singh v. Lyons,* 25-cv-01606, 2025 WL 2932635, at *2–3 (E.D. Va. Oct. 14, 2025); *Alejandro v. Olson*, 25-cv-02027, 2025 WL 2896348, at *7–9 (S.D. Ind. Oct. 11, 2025); *Rico-Tapia v. Smith,* No. 25-00379, 2025 U.S. Dist. LEXIS 206547, at *21 (D. Haw. Oct. 10, 2025); *Chavez v. Kaiser,* No. 25-cv-06984, 2025 WL 2909526, at *5 (N.D. Cal. Oct. 9, 2025); *Donis v. Chestnut,* No. 25-01228, 2025 WL 287514, at *11 (E.D. Cal. Oct. 9, 2025); *Eliseo A.A. v. Olson,* No. 25-3381, 2025 WL 2886729, at *2–4 (D. Minn. Oct. 8, 2025); *Covarrubias v. Vergara*, No. 25-cv-112, 2025 WL 2950097, at *3 (S.D. Tex. Oct. 8, 2025); *Buenrostro-Mendez v. Bondi,* No. 25-3726, 2025 WL 2886346, at *3 (S.D. Tex. Oct. 7, 2025); *S.D.B.B. v. Johnson,* No. 25-cv-882, 2025 WL 2845170, at *5 (M.D.N.C. Oct. 7, 2025); *Gonzalez v. Bostock,* 25-cv-01404, 2025 WL 2841574, at *3–4 (W.D. Wash. Oct. 7, 2025); *Hyppolite,* 2025 WL 2829511, at *12; *Artiga v. Genalo,* No. 25-5208, 2025 WL 2829434, at *7 *(E.D.N.Y. Oct. 5, 2025); Cordero Pelico v. Kaiser,* No. 25-cv-07826, 2025 WL 2822876, at *15 (N.D. Cal. Oct. 3, 2025); *Orellana v. Moniz,* 25-cv-12664, 2025 WL 2809996, at *5 (D. Mass. Oct. 3, 2025); *Elias Escobar v. Hyde*, No. 25-cv-12620, 2025 WL 2823324, at *3 (D. Mass. Oct. 3, 2025); *Belsai D.S. v. Bondi*, No. 25-cv-3682, 2025 WL 2802947, at *5–6 (D. Minn. Oct. 1, 2025); *Silva v. United States Immigr. & Customs Enf't,* No. 25-cv-284, 2025 U.S. Dist. LEXIS 191101, at *6–7 (D.N.H. Sep. 29, 2025); *Barrios v. Shepley, No. 25-cv-00406,* 2025 WL 2772579, at *10 (D. Me. Sep. 29, 2025); *Lepe v. Andrews,* No. 25-cv-01163, 2025 WL 2716910, at *4 (E.D. Cal. Sep. 23, 2025); *Chogllo Chafla v. Scott, Nos. 25-cv-00437,* 25-cv-00438, 25-cv-00439, 2025 WL 2688541,

at *6–9 (D. Me. Sep. 22, 2025); *Barrera v Tindall, No. 25-cv-541, 2025 WL* 2690565, at *5 (W.D. Ky. Sep. 19, 2025); *Pablo Sequen v. Kaiser*, No. 25-cv-06487, 2025 WL 2650637, at *6–8 (N.D. Cal. Sep. 16, 2025); *Salcedo Aceros v. Kaiser*, No. 25-cv-06924, 2025 WL 2637503, at *8–12 (N.D. Cal. Sep. 12, 2025); *Lopez Santos v. Noem*, No. 3:25-cv-01193, 2025 WL 2642278, at *3–5 (W.D. La. Sep. 11, 2025); *Jimenez v. FCI Berlin*, No. 25-cv-326, 2025 WL 2639390, at *5–10 (D.N.H. Sep. 8, 2025); *Doe v. Moniz*, 25-cv-12094, 2025 WL 2576819, at *5 (D. Mass. Sep. 5, 2025); *Garcia v. Noem*, No. 25-cv-01180, 2025 WL 2549431, at *5–7 (S.D. Cal. Sep. 3, 2025); *Francisco v. Bondi*, No. 25-cv-03219, 2025 WL 2629839, at *2–4 (D. Minn. Aug. 29, 2025); *Lopez-Campos v. Raycraft*, No. 25-cv-12486, 2025 WL 2496379, at *5–8 (E.D. Mich. Aug. 29, 2025); *Diaz v. Mattivelo*, No. 25-cv-12226, 2025 WL 2457610, at *3 (D. Mass. Aug. 27, 2025); *Kostak v. Trump*, No. 25-1093, 2025 WL 2472136, at *2–3 (W.D. La. Aug. 27, 2025); *Benitez v. Noem*, No. 25-cv-02190, 2025 U.S. Dist. LEXIS 171945, at *8–12 (C.D. Cal. Aug. 25, 2025); *Romero v. Hyde*, No. 25-11631, 2025 WL 2403827, at *11–13 (D. Mass. Aug. 19, 2025); *Maldonado v. Olson*, No. 25-cv-3142, 2025 WL 2374411, at *11–12 (D. Minn. Aug. 15, 2025); *dos Santos v. Noem*, 25-cv-12052, 2025 WL 2370988, at *6–8 (D. Mass. Aug. 14, 2025); *Lopez Benitez v. Francis*, No. 25-cv-5937, 2025 WL 2371588, at *4–9 (S.D.N.Y. Aug. 13, 2025); *Rosado v. Figueroa*, No. 25-12157, 2025 WL 2337099, at *6–11 (D. Ariz. Aug. 11, 2025) *report and recommendation adopted by*, 2025 WL 2349133 (Aug. 13, 2025); *Bautista v. Santacruz*, No. 25-cv-01873, 2025 U.S. Dist. LEXIS 171364, at *13–16 (C.D. Cal. July 28, 2025); *Martinez v. Hyde*, No. 25-11613, 2025 WL 2084238, at *5–9 (D. Mass. July 24, 2025); *Gomes*, 2025 WL 1869299, at *5–8; *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1256–61 (W.D. Wash. 2025).

80. Courts have uniformly rejected DHS's and EOIR's new interpretation because it defies the INA. As the *Rodriguez Vazquez* court and others have explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

81. Section 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." These removal hearings are held under § 1229a, to "decid[e] the inadmissibility or deportability of a[] [noncitizen]." *See Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

82. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a). As the *Rodriguez Vazquez* court explained, "[w]hen Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies." *Rodriguez Vazquez*, 779 F. Supp. 3d at 1257 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)); *see also Gomes*, 2025 WL 1869299, at *7.

83. Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole.

84. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. The statute's entire framework is premised on inspections at the border of people who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A).

85. Indeed, the Supreme Court has explained that this mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

86. The courts have distilled two central principles:

    a. Geographic/temporal limits: § 1225 applies only to noncitizens apprehended at or near the border and in the act of entry (*see Thuraissigiam*, 591 U.S. 103, 114, 139 (2020)), not to those apprehended years later in the interior.

    b. Statutory structure: Reading § 1225 as covering all noncitizens who were never lawfully "admitted" would render § 1226 largely meaningless, contrary to the rule against surplusage. *See Martinez*, 2025 WL 2084238, at *7; *Gomes v. Hyde*, No. 25-cv-11571, 2025 WL 1869299, at *6–8 (D. Mass. July 7, 2025).

87. A contrary reading renders superfluous recent amendments in the *Laken Riley Act*, Pub. L. No. 119-1, 139 Stat. 3 (2025), which added INA § 236(c)(1)(E) mandating detention for noncitizens inadmissible under § 212(a)(6)(A)(present without admission) who are implicated in enumerated crimes. If all such noncitizens were already mandatorily detained under § 235(b)(2)(A), Congress's addition would be meaningless. *See Corley v. United States*, 556 U.S. 303, 314 (2009) (statutes must be construed to give effect to all provisions).

88. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like Petitioner, who have already entered and were residing in the United States at the time they were apprehended.

89. Congress may expand procedural protections through statute, but it cannot legislate away fundamental constitutional guarantees. The Fourth Amendment's protection against unreasonable seizures applies to all persons within the territory of the United States,

including noncitizens. Immigration officials may not § 1225(b)(2)(A) detain individuals encountered in the interior indefinitely or without probable cause; the Fourth Amendment simply does not permit it. Likewise, the constitution's due process clause protections must be afforded to all those living in the U.S. before being deprived of their liberty.

90. At the nation's borders, however, the constitution's protections are lowered and almost nonexistent for those who are not in the U.S. (including those who are at the border still under the legal fiction of parole). The absence of a warrant requirement in 8 U.S.C § 1225, therefore, is in line with the longstanding principle that the search and seizure of persons at our country's borders are not subject to the Fourth Amendment's warrant requirement.[6]

91. Just as established as the border exception to the Fourth Amendment is the fact that immigration stops and arrests elsewhere are subject to the Fourth Amendment's protections. Indeed, "[l]ongstanding precedent establishes that '[t]he Fourth Amendment applies to all seizures of the person, including seizures that involve only a brief detention short of traditional arrest.'" The law in this area is not grey. Rather, since at least 2009, it has been "clearly established . . . that immigration stops and arrests [are] subject to the same Fourth Amendment requirements that apply to other stops and arrests—reasonable suspicion for a brief stop, and probable cause for any further arrest and detention."[7]

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[6] *See United States v. Flores-Montano*, 541 U.S. 149, 153 (2004) ("Congress, since the beginning of our Government, has granted the Executive Plenary authority to conduct routine searches and seizures at the border, without probable cause or a warrant . . .") (internal citations omitted); *United States v. Cotterman*, 637 F.3d 1068, 1076 (9th Cir. 2011) ("[T]here is [no] room for disagreement over the compelling underpinnings of the doctrine" exempting border searches and seizures from the Fourth Amendment's warrant requirement. "It is well established that the sovereign need not make any special showing to justify its search of persons and property at the international border.").

[7] *Morales v. Chadbourne*, 793 F.3d 208, 215 (2015) (quoting *United States v. Brignoni–Ponce*, 422 U.S. 873, 878, (1975) (citing *Davis v. Mississippi*, 394 U.S. 721 (1969); *Terry v. Ohio*, 392 U.S. 1, 16–19, (1968)); *see also Dunaway v. New York*, 442 U.S. 200, 216 (1979) ("[D]etention for custodial interrogation—regardless of its label—intrudes so severely on interests protected by the Fourth Amendment as necessarily to trigger the traditional safeguards against illegal arrest.").

92. The clarity of the law in this area is bolstered by the proscriptions of 8 U.S.C. § 1357, which "[c]ourts have consistently held" the inclusion of the phrase "reason to believe" in § 1357 "must be read in light of constitutional standards, so that 'reason to believe' must be considered the equivalent of probable cause."[8]

93. Despite the abundantly clear requirements of the Fourth Amendment, the government now argues that a statute with no warrant requirement (§ 1225(b)(2)(A)), historically applied at or near the border, allows DHS to arrest or detain aliens in the interior of the United States without any concern for the Fourth Amendment's protections. Such an interpretation is unconstitutional and any interpretation that would have such a result must be avoided.

94. The Supreme Court has explained the critical distinction between those outside the U.S. and those within it when it comes to the due process required before they may be deprived of their liberty:

> The distinction between an alien who has effected an entry into the United States and one who has never entered runs throughout immigration law. It is well established that certain constitutional protections available to persons inside the United States are unavailable to aliens outside of our geographic borders. But once an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all "persons" within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent. Indeed, this Court has held that the Due Process Clause protects an alien subject to a final order of deportation, though the nature of that protection may vary depending upon status and circumstance.[9]

95. Moreover, *Zadyvdas* left no doubt that civil detention, including in the immigration context, requires a sufficient justification—namely preventing flight or danger to the

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[8] *Id.* at 216-17 (citing *Au Yi Lau*, 445 F.2d at 222; see, e.g., *Tejeda–Mata v. Immigration & Naturalization Serv.*, 626 F.2d 721, 725 (9th Cir.1980) ("The phrase 'has reason to believe' [in § 1357] has been equated with the constitutional requirement of probable cause."); *United States v. Cantu*, 519 F.2d 494, 496 (7th Cir.1975) ("The words [in § 1357] of the statute 'reason to believe' are properly taken to signify probable cause. *"); see also United States v. Quintana*, 623 F.3d 1237, 1239 (8th Cir.2010) ("Because the Fourth Amendment applies to arrests of illegal aliens, the term 'reason to believe' in § 1357(a)(2) means constitutionally required probable cause.").

[9] *Zadvydas v. Davis*, 533 U.S. 678, 693–94 (2001).

community. *Id.* Where no such justification exists detention without due process is unconstitutional. *Id.*

96. Finally, *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024) is a landmark decision overruling *Chevron* deference thereby permitting this Honorable Court to come to its own conclusion on the interpretation of the relevant statutes without relying on Board precedent in *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025), which was wrongly decided.

DHS Initial Custody Determination

97. The Immigration Judge's reliance on *Matter of Cerda Reyes*, 26 I. & N. Dec. 528, 530 n.7 (BIA 2015) is misplaced, because *Cerda Reyes* treats 8 C.F.R. § 1003.19(c) as a venue rule rather than a jurisdiction-stripping provision, and DHS cannot defeat custody review by refusing to place into the record an initial custody determination.

98. Moreover, Footnote 7 of *Reyes* says an IJ is "limited to reviewing certain custody or bond determinations previously rendered by the DHS." *Matter of Cerda Reyes*, 26 I. & N. Dec. 528, 530 n.7 (BIA 2015). Read naturally, that means the IJ's review authority is derivative of a DHS custody determination that already exists; it is not a mandate requiring the court to acquire proof of an initial custody determination before proceeding and it does not give DHS the power to block review by refusing to place the underlying custody decision into the record.

99. DHS cannot have it both ways: Petitioner's detention for several months in DHS custody before his bond hearing, followed by DHS's appearance at and production of Petitioner for a bond hearing, necessarily presupposes an antecedent DHS custody determination under the regulatory scheme, and the Government's refusal to tender documentary proof of that determination does not erase the reality that one must have been made.

100. It is no secret **why** DHS blatantly refused to provide proof of an initial custody determination. It is because that document, the I-200, Warrant for Arrest of Alien, or the I-286, Notice of Custody Determination is evidence that Respondent was detained under Section 236(a) of the Immigration and Nationality Act, not Section 235(b) as they repeatedly assert.

101. DHS has consistently treated Petitioner as though they are subject to § 1226, and therefore, have created a liberty interest that cannot be abrogated by the government unilaterally deciding to "switch tracks."

102. Every DHS created, authored, and signed document issued in conjunction with Petitioner's encounter with DHS explicitly cited § 1226 for authority; meanwhile, § 1225 is not referenced anywhere in any of those documents. Nonetheless, the government now attempts to switch Petitioner's detention to being under § 1225 through a campaign of withholding and deception.

103. Federal Courts faced with such arguments from the government in cases where DHS had previously consistently treated the alien as being subject to § 1226 have rejected this purported switching. In so doing, courts have explained that "settled law precludes the Government from now switching gears to contend that he has actually been detained under Section 1225(b)(2)." In this context, courts have also found DHS' prior treatment of an alien as though they are subject to § 1226 has resulted in concluding such an alien "enjoys a liberty interest under § 1226(a) and the procedural protections thereunder that cannot be unilaterally abrogated without process by the Government simply "switching tracks."

Flight Risk

104. While the immigration judge issued an alternative decision finding Petitioner to be a flight risk, Petitioner challenges whether the bond hearing comports with his due process rights.

105. While § 1226(e) limits judicial review of the government's discretionary judgment regarding a noncitizen's application for bond, that section does not strip federal courts of "traditional habeas jurisdiction," or jurisdiction over constitutional claims or questions of law. *See, e.g., Martinez v. Clark*, 124 F.4th 775, 781 (9th 2024).

106. As this Court has the authority to review the substance of the immigration judge's determination that Petitioner is a flight risk, it also has authority to determine whether the hearing that led to that determination comported with the due process rights protected by the Constitution.

107. Here, the Immigration Judge failed to provide a constitutionally adequate bond hearing because it denied bond based on a determination lacking the impartiality of a neutral adjudicator and without providing a reasoned consideration of all the factors relevant to whether Petitioner is a flight risk.

108. The facts in *R-A-V-P-* are sufficiently distinguishable from the facts at hand such that reliance on that case law should be considered legal error. *In Matter of R-A-V-P*, 27 I&N Dec. 803, the Board of Immigration Appeals (BIA) agreed with the immigration judge's determination that respondent was a flight risk given his minimal ties to the United States and his limited avenue for relief. In R-A-V-P-, the respondent in question was an individual who had entered the United States only four months before his bond hearing took place. That individual had no family ties, no employment history, no community ties, or any record of appearances in court in the United States.

109. The BIA in *R-A-V-P-* found that these factors in conjunction with a low likelihood of success on relief constituted a risk of flight sufficient to affirm the immigration judge's denial of bond.

110. Here, the Immigration Judge should have impartially considered, at a minimum, (1) whether the alien has a fixed address in the United States; (2) the alien's length of residence in the United States; (3) the alien's family ties in the United States, and whether they may entitle the alien to reside permanently in the United States in the future; (4) the alien's employment history; (5) the alien's record of appearance in court; (6) the alien's criminal record, including the extensiveness of criminal activity, the recency of such activity, and the seriousness of the offenses; (7) the alien's history of immigration violations; (8) any attempts by the alien to flee prosecution or otherwise escape from authorities; and (9) the alien's manner of entry to the United States. *Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006).

111. Had the Immigration Judge properly weighed the factors, she would have found Petitioner not to be a flight risk according to the Guerra factors. First, she would have seen that Petitioner has been in the United States since 2001, over 25 years. Far, far longer than the four months in *R-A-V-P* -. Second, Respondent has a fixed address at 4652 Vilma Ln., West Palm Beach, FL 33417 as described in the Sponsor's affidavit where he lived with his wife and young children. She would have seen that Respondent provided the credentials and statement of support from a valid, reliable, and credible sponsor who Respondent had known from the church for four (4) years. *See Dobrotvorskii* at 1, ("In bond proceedings, the existence of a valid, reliable, and credible sponsor is relevant to the determination of

flight risk."). She would have considered the Respondent's family ties in the United States including his pregnant wife, and his two U.S. citizen children aged four and eleven.

112. She would have seen the Respondent's employment history as a landscaper as demonstrated by his consistent history of filing tax returns since 2001.She would have seen the Respondent's record of appearance in traffic court to be impeccable as demonstrated by the resolved dispositions for his multiple traffic offenses. She would have seen the lack of serious criminal history as demonstrated by the fact that Respondent has only been cited for driving without a valid driver's license. She would have considered that Respondent's only immigration violation is his unlawful entry from over twenty-five years ago in 2001. She would have considered that Respondent had never made any attempts to flee prosecution or escape from authorities. To the contrary, he had always appeared for any of his legal obligations. She would have considered Respondent's numerous letters of support attesting to knowing Respondent's good moral character for seven years in the case of Jose Contreras, ten years in the cases of Martica Tucker and Wayne Barish, fifteen years in the case of Sylvia Izzo, and twenty years in the case of Nery Escalante.

113. She would have considered Respondent's prima facie eligibility for EOIR-42b Cancellation of Removal for Certain Nonpermanent Residents given his over ten years of continuous physical presence in the United States, two qualifying U.S. citizen children with another on the way, lack of disqualifying criminal history, and good moral character as demonstrated by his lack of criminal history and the numerous reference letters submitted in support of Respondent's bond package, involvement with the church and the local Guatemalan-Mayan center.

Maldonado Bautista v. Santacruz

114. On March 6, 2026, the Court of Appeals for the Ninth Circuit issued a Stay on bond hearings for class members outside of the Central District of California; nonetheless, Petitioner asserts his class membership and preserves the following arguments should either party decide to appeal or should the 9th Circuit reach a decision during the pendency of these proceedings.

115. On November 20, 2025, the district court granted partial summary judgment on behalf of individual plaintiffs and on November 25, 2025, certified a nationwide class and extended declaratory judgment to the certified class. *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3289861, at *11 (C.D. Cal. Nov. 20, 2025) (order granting partial summary judgment to named Plaintiffs-Petitioners); *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) (order certifying Plaintiffs-Petitioners' proposed nationwide Bond Eligible Class, incorporating and extending declaratory judgment from Order Granting Petitioners' Motion for Partial Summary Judgment).

116. The declaratory judgment held that the Bond Eligible Class members are detained under 8 U.S.C. § 1226(a), and thus may not be denied consideration for release on bond under § 1225(b)(2)(A). *Maldonado Bautista*, 2025 WL 3289861, at *11.

117. Nonetheless, the EOIR and its subagency, the Immigration Court, and the DHS have blatantly refused to abide by the declaratory relief and have unlawfully ordered that Petitioner be denied the opportunity to be released on bond. *See* **Exhibit L,** *Practice Alert: EOIR Issues Nationwide Guidance on Maldonado Bautista*.

118. Respondents are bound by the judgment in *Maldonado Bautista*, as it has the full "force and effect of a final judgment." 28 U.S.C. § 2201(a). Nevertheless, Respondents continue

to flagrantly defy the judgment in that case and continue to subject Petitioner to unlawful detention despite his clear entitlement to consideration for release on bond as a Bond Eligible Class member. *Id.*

119. Immigration judges have informed class members in bond hearings that they have been instructed by "leadership" that the declaratory judgment in *Maldonado Bautista* is not controlling, even with respect to class members, and that instead IJs remain bound to follow the agency's prior decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

120. Alternatively, the Court should order Petitioner's immediate release unless Respondents provide a constitutionally adequate bond hearing with a neutral arbiter under 8 U.S.C. § 1226(a) within seven days.

CLAIMS FOR RELIEF

COUNT I
Unlawful Detention Under 8 U.S.C. § 1225; Custody Properly Governed By 8 U.S.C. § 1226 (Misapplication of Mandatory Detention Statute)

121. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

122. 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 who previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

123. Petitioner is currently being detained without the possibility of bond under 8 U.S.C. § 1225(b)(2)(A), based on DHS's argument that he is "an Applicant seeking Admission under the provisions of Sec. 235(b)(2)(A) of the Immigration and Nationality Act ('INA')."

124. This argument is legally erroneous. Section 1225 applies to noncitizens actively "seeking admission" at the border or its immediate functional equivalent. By contrast, § 1226 governs the arrest and detention of those "already in the country" pursuant to a warrant issued by the Attorney General. The two provisions are mutually exclusive. *See Jennings v. Rodriguez*, 583 U.S. 281, 288–89 (2018); *Matter of M-S-*, 27 I. & N. Dec. 509, 516 (A.G. 2019).

125. Petitioner plainly falls within § 1226. He has resided in the interior of the United States for 25 years, where he was apprehended despite his established community ties, sponsorship and available relief, and lack of criminal history since he began living in the United States in 2001.

126. The charging document itself expressly alleges that Petitioner is "present in the United States without admission or parole," language that presumes residence in the interior and confirms that he was not in the process of seeking admission. Taken together, these contradictions underscore the arbitrariness of Petitioner's detention and the government's mischaracterization of his case.

127. To hold otherwise would effectively erase the statutory line between §§ 1225 and 1226, converting virtually all noncitizens present without admission into mandatory detainees and rendering § 1226(a) a dead letter. Courts have consistently rejected this outcome. See Martinez, 2025 WL 2084238, at *7 (rejecting interpretation that would "nullify" Congress's amendment to § 1226(c)); *Gomes v. Hyde*, No. 25-cv-11571, 2025 WL

1869299, at *7 (D. Mass. July 7, 2025) (noting that §§ 1225 and 1226 "apply to different classes" of noncitizens).

128. In sum, Petitioner was not "seeking admission" within the meaning of § 1225(b) but was "already in the country" within the meaning of *Jennings*, 583 U.S. at 288–89. His custody is governed by § 1226(a), under which detention is discretionary and subject to individualized bond hearings. DHS's argument is contrary to law, unsupported by the record, and must be set aside.

129. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates the INA.

COUNT II
Violation of the Due Process Clause of the Fifth Amendment to the United States Constitution (Procedural Due Process); 5 U.S.C. §§ 702, 706

130. Petitioner re-alleges the allegations contained in all preceding paragraphs of this Petition-Complaint as if fully set forth herein.

131. 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 (2001).

132. Petitioner has a fundamental interest in liberty and being free from official restraint.

133. The government's detention of Petitioner without a constitutionally adequate bond redetermination hearing to determine whether he is a flight risk or danger to others violates his right to due process.

134. Here, Respondents have made no finding that Petitioner is a danger to the community as an individual with no criminal history whatsoever.

135. With regard to flight risk, Petitioner has provided a litany of evidence including a sworn affidavit from a U.S. citizen sponsor willing to ensure he attends all of his immigration proceedings and requests a constitutionally adequate bond hearing with a neutral arbiter or immediate release.

COUNT III
Violation of the INA:
Request for Relief Pursuant to *Maldonado Bautista*

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

137. On March 6, 2026, the Court of Appeals for the Ninth Circuit issued a Stay on bond hearings for class members outside of the Central District of California; nonetheless, Petitioner asserts his class membership and preserves the following arguments should either party decide to appeal or should the 9th Circuit reach a decision during the pendency of these proceedings.

138. As a member of the Bond Eligible Class, Petitioner is entitled to consideration for release on bond under 8 U.S.C. § 1226(a).

139. The order granting partial summary judgment in *Maldonado Bautista* holds that Respondents violate the INA in applying the mandatory detention statute at § 1225(b)(2) to class members.

140. The order granting class certification in *Maldonado Bautista* further orders that "[w]hen considering this determination with the MSJ Order, the Court extends the same declaratory relief granted to Petitioners to the Bond Eligible Class as a whole."

141. Respondents are parties to *Maldonado Bautista* and bound by the Court's declaratory judgment, which has the full "force and effect of a final judgment." 28 U.S.C. § 2201(a).

142. By denying Petitioner a bond hearing under § 1226(a) and asserting that he is subject to mandatory detention under § 1225(b)(2), Respondents violate Petitioner's statutory rights under the INA and the Court's judgment in *Maldonado Bautista*.

COUNT IV
Violation of the Fourth Amendment

143. Petitioner re-alleges and incorporates by reference all the foregoing paragraphs above.

144. Petitioner's arrest by Respondents without the issuance of a warrant is unlawful and constitutes a violation of the Fourth Amendment. Petitioner's detention is thus unlawful, and his/her immediate release is appropriate.

COUNT V
Misapplication of 8 C.F.R. §§ 1003.19(a), (h)(2)(i)

145. Petitioner re-alleges and incorporates by reference all the foregoing paragraphs above.

146. 8 C.F.R. § 1003.19(c) is not a jurisdiction-stripping provision, and the immigration judge's finding that she lacked jurisdiction to hear the bond hearing is a violation of the Immigration and Nationality Act. Petitioner's detention is thus unlawful, and his/her immediate release is appropriate.

PRAYER FOR RELIEF

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

(1) Assume jurisdiction over this matter;
(2) Order that Petitioner shall not be transferred outside the District of Colorado;
(3) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days.

(4) Declare that the Petitioner's detention violates the Due Process Clause of the Fifth Amendment.
(5) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately.
(6) Grant any further relief this Court deems just and proper.

/s/ Jan Peter Weiss

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PEREZ-PEREZ, Gonzalo)
[redacted])
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Petitioner,)
v.) Case No.: 1:26-cv-1158
)
PAMELA BONDI, U.S. Attorney General, et al.)

INDEX OF SUPPORTING DOCUMENTS

Attachment No.	Document Title
1	Civil Cover Sheet
2	Evidentiary Exhibits A – L
3	Summons to the Attorney General of the United States
4	Summons to the Warden of Denver Contracting Detention Facility
5	Summons to U.S. Secretary of Homeland Security
6	Summons to the U.S. Immigration and Customs Enforcement
7	Summons to the U.S. Immigration and Customs Field Office
8	Motion to Show Cause and Proposed Order

Counsel for Petitioner

Dated: March 20, 2026

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

I represent Petitioner, **GONZALO PEREZ PEREZ** 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 20th March, 2026.

/s/ Jan Peter Weiss