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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION

ELIBERTO MONTALVO AGUILLON, Petitioner, v. **MARIO GARCIA**, Warden, Webb County Detention Center; **ROBERT CERNA,** Field Office Director of the Harlingen Field Office, U.S. Immigration and Customs Enforcement **TODD LYONS,** Acting Director of Immigration and Customs Enforcement; **MARKWAYNE MULLINS** Secretary of the U.S. Department of Homeland Security; and **PAMELA JO BONDI** United States Attorney General, in their official capacities. Respondents.	Civ. No. _____ **PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241** Agency No. [redacted]

INTRODUCTION

1. Petitioner Eliberto Montalvo Aguillon ("Petitioner") files this petition for a writ of habeas corpus, requesting the Court's intervention because Respondents have detained him and wrongfully barred him from seeking bond.

2. Petitioner has been residing in the U.S. for twenty-seven years, having entered on or about March 1, 1999. He is married and has two U.S. citizen children, one of whom is a minor. He was not apprehended at the time of his entry.

3. Petitioner was placed in removal proceedings via the service of a Notice to Appear, dated February 16, 2026, about twenty-seven years after his entry to the U.S. He is charged with being removable for being an alien present in the U.S. without having been admitted or paroled pursuant to Immigration and Nationality Act ("INA") section 212(a)(6)(A)(i) as well as being an alien who does not possess valid entry documents pursuant to INA section 212(a)(7)(A)(i)(I). *Exhibit A, Notice to Appear.* He was detained on that same date by immigration officials of the Department of Homeland Security ("DHS") and transferred to the Webb County Detention Center where he remains detained. *Exhibit B, Notice to EOIR: Alien Address.*
4. On July 8, 2025, U.S. Immigration and Customs Enforcement ("ICE"), "in coordination with the Department of Justice ("DOJ")," announced a corresponding policy that rejected the well-established understanding of the statutory and regulatory framework and reversed decades of practice. *Pet. Ex. 5.* The new policy claims that all persons who entered the U.S. without inspection shall now be deemed subject to mandatory detention under § 1225(b)(2)(A). *Id.*
5. On September 5, 2025, the Board published its holding in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), which held that, based on INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A) (2018), IJs now, after decades of holding otherwise, lack authority to hear bond requests or to grant bond to aliens who are present in the U.S. without admission.
6. On November 25, 2025, a district court in the Central District of California certified a nationwide class under Rule 23(b)(2). *Maldonado Bautista v. Santacruz, Jr.*, No. 5:25-CV-1873, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025) (certifying a class including ''[a]ll noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3)

are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination"). The court previously granted petitioners partial summary judgment and then "extend[ed] the same declaratory relief granted to Petitioners to the Bond Eligible Class as a whole." *Id.*; *Maldonado Bautista v. Santacruz, Jr.*, No. 5:25-CV-1873, 2025 WL 3289861, at *11 (C.D. Cal. Nov. 20, 2025). The court's final judgment was entered on December 18, 2025.

7. On January 13, 2026, Chief IJ Teresa L. Riley issued nationwide guidance instructing all IJs that: *"Maldonado Bautista* is not a nationwide injunction and does not purport to vacate, stay or enjoin *Yajure Hurtado."* IJs are instructed to follow the BIA's decision in *Matter of Yajure Hurtado* as binding precedent. The guidance from EOIR states that a "declaratory judgment" is not binding and does not have the authority to compel specific action. *Exhibit E, AILA Practice Alert.*

8. On February 6, 2026, the Fifth Circuit decided and published *Buenrostro,* holding that all persons who are not inspected or admitted, whether arriving in the U.S. or not and regardless of the length of residence in this country, remained "applicants for admission" and subject to § 1225(b)'s mandatory detention provision. *See Buenrostro-Mendez v. Bondi*, No. 25-cv-20496, 2026 WL 323330 (5th Cir. Feb. 6, 2026). That decision entirely ignored *Maldonado Bautista* and its holding.

9. On February 18, 2026, the California Central District Court issued an "Order Granting Plaintiff Petitioners' Motion To Enforce Judgment" in *Maldonado Bautista.* The Court reviewed the facts of the case, including that that Petitioner *Maldonado Baustista* had entered the United States without inspection and was detained four years later and held with no bond as an arriving alien, pursuant to 8 U.S.C. § 1225. The Court noted that it had issued no less

than four orders granting the release of and/or immediate scheduling of bond hearings for *Maldonado Bautista* and similarly situated aliens:

> In the time since issuing that initial order, the Court declared as a matter of law that indefinite detention for Bautista and those similarly situated is unlawful. The number of people in Bautista's exact situation was so large that the Court found it appropriate to certify a nationwide class to which this declaration of law would apply. But declaratory relief was not the only form of relief ordered. The Court also vacated the underlying DHS Policy that the Government relied on to continue detaining people like Bautista.
>
> *Maldonado Bautista, Civ. Minutes,* at 6.

10. The Court also noted that, in briefing, "Respondents had agreed that there was nothing beyond "the interpretation and the binding controlling authority of *Yajure Hurtado*" justifying "the continued detention of and denial of bond hearings for [Bond Eligible Class members]." *Id.* at 9. The Court noted that it "recognizes the Fifth Circuit reached a contrary decision on the issue of statutory interpretation in this case" in *Buenrostro.* The Court noted that *Buenrostro* was not binding on it and that it found it relevant that the Petitioners in *Buenrostro* conceded that they are applicants for admission within the meaning of § 1225(a)(1), "unlike Petitioners here." *Id.* at 10, n.6.

11. The Court continued, "As evidenced by the volume of habeas petitions filed by Bond Eligible Class members and the conduct of Respondents in continuing to violate the rights of those class members, further is relief necessary to effectuate the Final Judgment. Given the circumstances surrounding Respondents' noncompliance and its threat to separation of powers, the Court finds further relief is proper to fulfill this Court's constitutional duties." *Id.* at 14-15. The Court therefore issued the following order:

> The Court's initial decision to deny Petitioners' request to vacate *Yajure Hurtado* under the APA was an act of judicial restraint: a formality. However, based on the representations Respondents have made to the Court, it is evident that further relief is both necessary and proper. The Court VACATES *Yajure Hurtado* under the

APA.

Maldonado-Bautista, Civ. Min. at 16, 19-22.

12. The Fifth Circuit's decision in *Buenrostro* addresses the statutory classification of certain noncitizens as applicants for admission under 8 U.S.C. § 1225. *See Buenrostro-Mendez v. Bondi*, No. 25-cv-20496, 2026 WL 323330. However, *Buenrostro* did not address, and did not resolve, the distinct constitutional question presented here—whether the government may detain a noncitizen for a prolonged or indefinite period without providing any mechanism for a custody determination or review of that detention.

13. Nevertheless, Respondents maintain that Petitioner is being held pursuant to 8 U.S.C. § 1225(b)(2) as an applicant for admission, and that there is no bond available.

14. Petitioner's detention with no opportunity to seek bond violates his rights under the Due Process Clause of the U.S. Constitution, the INA, and the Administrative Procedure Act ("APA"). Petitioner seeks a writ from this Court ordering his release, as Respondents will not afford him a bond hearing, because the DOJ has issued guidance through the Chief IJ that the Executive Office for Immigration Review ("EOIR") has adopted ICE's position and will not release him on bond. *Exhibit E, AILA Practice Alert.*

15. Accordingly, to vindicate Petitioner's statutory and constitutional rights, this Court should grant the instant petition for a writ of habeas corpus to remedy his unlawful detention, and to enjoin Respondents from continuing to violate his due process rights under the U.S. Constitution, treaties, and laws.

16. Pursuant to 28 U.S.C. § 2243, and as set forth in an application filed herewith, Petitioner respectfully requests that the Court immediately order Respondents to show cause why the writ of habeas corpus should not be granted, and that Respondents be ordered to file a return within

three days. *See* 28 U.S.C. § 2243. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 2241 (habeas corpus); 28 U.S.C. § 1651 (All Writs Act); 28 U.S.C. § 1331 (federal question); 28 U.S.C. §§ 2201-02 (declaratory relief); and the U.S. Constitution, art. I, § 9, cl. 2 (Suspension Clause).

17. Petitioner asks this Court to find that his continued detention is wrongful and order his released from custody as seeking bond before the IJ is moot as IJs have been ordered to not find jurisdiction for bond, despite the rulings of federal district court judges.

CUSTODY

18. Petitioner is in the physical custody of Respondent Robert Cerna, Harlingen Field Office Director for Enforcement and Removal Operations ("ERO"), U.S. Immigration and Customs Enforcement ("ICE"), DHS, and Respondent Mario Garcia, Warden of Webb County Detention Center in Laredo, Texas. Petitioner is under the direct control of Respondents and their agents.

JURISDICTION

19. This action arises under the Constitution of the U.S. and the INA. 8 U.S.C. § 1101 *et seq.*

20. 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 U.S. Constitution (Suspension Clause).

21. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et. seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651. No petition for habeas corpus has previously been filed in any court to review Petitioner's case.

22. To the extent exhaustion of administrative remedies may be considered, it is not required here or is excused as futile. Courts have consistently recognized that exhaustion in § 2241

proceedings is prudential, not jurisdictional.

23. Petitioner cannot obtain a bond hearing because immigration judges have been directed to find that they lack jurisdiction over such requests for individuals in Petitioner's position. As a result, there is no administrative process available to provide the relief sought.

24. Requiring Petitioner to pursue administrative remedies under these circumstances would be futile, as the agency has predetermined the issue and no adjudicator has authority to grant relief. Habeas review is therefore appropriate.

25. This petition challenges the legality of Petitioner's detention, not the validity of any removal order or the underlying removal proceedings. Accordingly, it falls squarely within the core of habeas corpus review under 28 U.S.C. § 2241.

26. The jurisdictional limitations set forth in 8 U.S.C. § 1252 do not bar this Court's review. Section 1252(a)(5) applies to review of removal orders, and § 1252(b)(9) channels claims arising from removal proceedings into petitions for review. Petitioner does not challenge any removal order and raises a claim that is independent of the merits of removal.

27. Courts have consistently recognized that challenges to immigration detention—particularly where the petitioner alleges unlawful or unconstitutional confinement—remain cognizable in habeas. *See Jennings v. Rodriguez*, 583 U.S. 281, 302 (2018).

28. Because Petitioner challenges the absence of any lawful mechanism to review his detention, this Court retains jurisdiction to grant habeas relief.

VENUE

29. Venue is proper because Petitioner is detained at the Webb County Detention Center in Laredo, Texas, which is within the jurisdiction of this District.

30. Additionally, venue is proper in this District because Respondents are officers,

employees, or agencies of the U.S. and a substantial part of the events or omissions giving rise to Petitioner's claims occurred in this District. 28 U.S.C. § 1391(e).

REQUIREMENTS OF 28 U.S.C. § 2243

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

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) (emphasis added).

PARTIES

33. Petitioner is an alien who does not have a final order of removal. Petitioner is currently detained at Webb County Detention Center in Laredo, Texas, located at 9998 S Hwy 83. He is in physical custody, and under the direct control, of Respondents and their agents.

34. Respondent PAMELA JO BONDI is the Attorney General of the U.S. and the most senior official in the U.S. DOJ. She has the authority to interpret immigration laws and adjudicate removal cases. 8 U.S.C. § 1103(g). The Attorney General delegates this responsibility to the Executive Office for Immigration Review ("EOIR"), which administrates the immigration courts and the Board. Respondent is named in her official capacity. Respondent's address is 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530.

35. Respondent TODD LYONS is Acting Director of Immigration and Customs Enforcement. Respondent's address is 500 12th St SW Washington, DC 20536

36. Respondent MARKWAYNE MULLINS is the Secretary of the U.S. DHS, an agency of the U.S. Respondent is responsible for the administration of immigration laws pursuant to 8 U.S.C. § 1103(a). The Secretary is a legal custodian of the Plaintiff-Petitioner. Respondent is named in her official capacity. His address is Department of Homeland Security, Washington, D.C. 20528.

37. Respondent ROBERT CERNA is the Field Office Director for the Harlingen ERO Office. He is a custodial official acting within the boundaries of the judicial district of the U.S. Court for the Southern District of Texas. Pursuant to Respondent's orders, Petitioner remains detained. Respondent is sued in his official capacity. Respondent can be served at U.S. Immigration and Customs Enforcement, Office of the Principal Legal Advisor, 500 12th St., SW, Mail Stop 5900, Washington, DC 20536-5900.

38. Respondent MARIO GARCIA is the Warden of the Webb County Detention Center. He is Petitioner's immediate custodian and resides in the judicial district of the U.S. Court for the Southern District of Texas. Respondent is named in his official capacity. Respondent can be served at 9998 S Hwy 83, Laredo, Texas 78046.

STATEMENT OF FACTS

39. Petitioner is a forty-six-year-old citizen of Mexico who originally entered the United States on March 1, 1999. On November 20, 2017, Petitioner filed Form I-918, Petition for U-Nonimmigrant Status, with USCIS. *Exhibit C, USCIS Correspondence*. The petition included the required law-enforcement certification confirming that Petitioner was helpful in the investigation or prosecution of qualifying criminal activity. After reviewing the petition and

conducting background checks, USCIS issued a Bona Fide Determination ("BFD") on August 29, 2022. *See Id.* As part of that BFD, USCIS granted Respondent Deferred Action, and Employment authorization under the agency's U-visa bona fide determination process. *Exhibit D*, Employment Authorization Approval Notice.

40. The government has previously evaluated Petitioner and determined that he warranted deferred action and employment authorization in connection with his pending U-visa petition. That prior determination underscores that Petitioner is neither a danger to the community nor a flight risk and further demonstrates the arbitrariness of his continued detention without any opportunity for individualized review.

41. He is married to another Mexican citizen who is also a U-Visa applicant. He has two U.S. citizen children, ages 16 and 24.

42. Petitioner was placed in removal proceedings via the service of a NTA, dated February 16, 2026. He is charged with being removable for being an alien present in the U.S. without having been admitted or paroled pursuant to INA section 212(a)(6)(A)(i) as well as being an alien who does not possess valid entry documents pursuant to INA section 212(a)(7)(A)(i)(I). *Exhibit A, Notice to Appear.* He was detained on that same date by immigration officials of the Department of Homeland Security ("DHS") and transferred to the Webb County Detention Center where he remains detained. *Exhibit B, Notice to EOIR: Alien Address.*

43. Petitioner remains detained. There continues to be no evidence in the record to indicate that Petitioner is a flight risk, given his strong and longstanding ties to the U.S., or that allowing him to be released would present a danger to public safety or national security.

44. Petitioner maintains that the BIA erred in concluding that *Yajure Hurtado* bars the IJ from hearing and granting his request for bond pending the conclusion of removal proceedings. He

further avers that the IJ in this case is wrongfully ignoring the judgment in *Maldonado Bautista.*

45. Petitioner has no other remedy at law but to seek relief from this Court.

LEGAL FRAMEWORK

46. The INA broadly empowers the DHS to detain and initiate removal proceedings against noncitizens. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.

47. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in regular removal proceedings before an IJ. *See* 8 U.S.C. § 1229a. Persons detained under § 1226(a) 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 until their removal proceedings are concluded, *see* 8 U.S.C. § 1226(c).

48. 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).

49. Last, the INA also provides for detention of noncitizens who have a final order of removal, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)–(b).This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).

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

ARGUMENT

A. THIS COURT HAS HABEAS JURISDICTION TO REVIEW THE LEGALITY OF PETITIONER'S DETENTION

51. This petition challenges the legality of Petitioner's detention—not the validity of any removal order or the merits of removal proceedings. It therefore falls squarely within the core of habeas corpus review under 28 U.S.C. § 2241. The jurisdictional limitations of 8 U.S.C. § 1252 do not bar review. Section 1252(a)(5) governs judicial review of removal orders, and § 1252(b)(9) channels claims arising from removal proceedings into petitions for review. Petitioner raises neither. Instead, he challenges a detention regime that operates independently of any removal determination and that deprives him of any forum to contest his confinement.

52. The Supreme Court has made clear that such claims remain cognizable in habeas. *Jennings v. Rodriguez*, 583 U.S. 281, 302 (2018). Where a petitioner alleges unlawful or unconstitutional detention, federal courts retain authority to grant relief. This case presents precisely that circumstance. Petitioner's claim does not arise from, nor does it require review of, any removal proceeding. It instead challenges the legality of executive detention itself, which remains independently reviewable in habeas.

B. REVIEW OF CIVIL IMMIGRATION DETENTION DECISIONS BY DOJ

53. For decades, the government treated noncitizens who entered without inspection but were later apprehended in the interior as subject to detention under 8 U.S.C. § 1226(a), with access to bond hearings before an immigration judge. That settled practice ensured that detention decisions were subject to individualized review. In recent months, however, Respondents have adopted an entirely new interpretation of the statute. On May 22, 2025, the Board issued a published decision holding that noncitizens detained upon arrival in the U.S. are applicants for admission and subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). *See Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025).

54. On July 8, 2025, ICE, "in coordination with the Department of Justice," announced a corresponding policy that rejected the well-established understanding of the statutory and regulatory framework and reversed decades of practice. The new policy claims that all persons who entered the U.S. without inspection shall now be deemed subject to mandatory detention under § 1225(b)(2)(A).

55. Subsequently the BIA decided *Yajure Hurtado*, supra. There, the BIA formally adopted the ICE and DOJ's interpretation of § 1225(b). The BIA held that all persons who are not inspected or admitted, whether arriving in the U.S. or not and regardless of the length of residence in this country, remained "applicants for admission" and subject to § 1225(b)'s mandatory detention provision if placed in removal proceedings. *Matter of Yajure Hurtado*, 29 I&N Dec. 216.

56. Thereafter, the Fifth Circuit, relying heavily on the Board's decision in *Yajure Hurtado,* sided with DHS and the BIA to determine that all noncitizens who are present in the United States without lawful admission are subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). *See Buenrostro-Mendez v. Bondi*, No. 25-cv-20496, 2026 WL 323330 (5th Cir. Feb. 6, 2026).

57. Under that approach, immigration judges have been instructed that they lack jurisdiction to conduct bond hearings, leaving detainees without any mechanism to seek release.

C. PETITIONER IS DETAINED UNDER A REGIME THAT PROVIDES NO MECHANISM FOR CUSTODY REVIEW

58. As a result, Respondents' current position rests on the premise that Petitioner—despite residing in the United States for nearly three decades—must be treated as an "applicant for admission" subject to mandatory detention under 8 U.S.C. § 1225(b).

59. Yet, the vacatur of *Yajure Hurtado* underscores that this current detention framework rests on an unstable and shifting interpretation of the statute. Regardless of the continued force of any particular agency or judicial interpretation, a vital constitutional question remains: whether

Respondents may detain Petitioner without providing any mechanism for custody review. After all, nothing in *Buenrostro* authorizes the government to detain individuals without providing any forum—administrative or judicial—in which the legality or necessity of that detention may be meaningfully reviewed. The decision addresses statutory interpretation, not the constitutional minimum procedures required to sustain civil detention.

60. Thus, even accepting the classification under 8 U.S.C. § 1225(b) pursuant to *Buenrostro* for purposes of argument, the dispositive issue is not how Petitioner is labeled, but whether his detention is subject to any meaningful review. Currently, it is not. By instructing immigration judges that they lack jurisdiction to conduct bond hearings for individuals in Petitioner's position, any administrative mechanism to evaluate whether continued detention is necessary has been eliminated. As a result, Petitioner is confined in a system in which no decisionmaker—administrative or otherwise—has authority to assess whether his detention is justified.

61. Therefore, this is not a case in which Petitioner received an adverse bond determination and seeks review of that discretionary decision. It is a case in which **no custody determination is available at all**. Such a regime places Petitioner's liberty entirely within unreviewable executive control. Habeas corpus exists precisely to ensure that executive detention remains subject to judicial oversight where no other forum is available.

D. PETITIONER REMAINS A MALDONADO BAUTISTA CLASS MEMBER

62. The reasoning in *Maldonado Bautista* addresses the same detention framework at issue here and confirms that detention without access to bond review for individuals in Petitioner's position is unlawful.

63. Petitioner was not apprehended at the time of his 1999 entry without inspection, but rather after

he was encountered twenty-seven years later. He was then placed in immigration proceedings. He is clearly a class member listed in *Maldonado Bautista.*

64. Class membership recognizes that civil immigration detention is constitutionally permissible only where it serves a legitimate regulatory purpose and is accompanied by procedures that ensure detention is warranted in the individual case. *Zadvydas*, 533 U.S. at 690–91; *Demore v. Kim*, 538 U.S. 510, 528 (2003). It must bear a reasonable relation to its purpose—typically ensuring appearance at proceedings or protecting the community—and that relationship can be maintained only through an individualized assessment of the necessity of continued confinement.

65. Here, no such assessment can occur even though Petitioner has resided in the United States for nearly three decades, established deep family and community ties, and has been granted deferred action and employment authorization by the government itself. That conclusion is not dependent on the authority of *Maldonado Bautista* itself, but reflects longstanding constitutional principles governing civil detention.

66. Yet, Respondents have provided no mechanism—none—through which these factors can be evaluated. Where the government provides no opportunity for individualized review, detention ceases to function as a regulatory measure and becomes arbitrary.

E. THE ABSENCE OF ANY ADJUDICATOR RENDERS PETITIONER'S DETENTION UNLAWFUL

67. Civil detention is constitutionally permissible only where it is accompanied by procedures ensuring that confinement is justified in the individual case. Where no such procedures exist, detention becomes arbitrary and cannot be sustained. By maintaining a detention scheme in which immigration judges disclaim jurisdiction and no alternative process exists, Respondents

have created a system in which detention is insulated from both administrative and meaningful judicial review.

68. Detention without access to a custody determination is not merely prolonged—it is unbounded. Without a mechanism to evaluate whether continued confinement is justified, there is no limiting principle governing the duration of detention, rendering it effectively indefinite.

69. Because Petitioner is detained without access to any mechanism for custody review, his detention is unlawful. Habeas relief is necessary not to second-guess an agency decision, but to restore the minimum procedural protections required by the Constitution. Absent such relief, Petitioner will remain confined in a system that provides no means to test the legality of his detention.

CAUSES OF ACTION

COUNT I

Procedural Due Process Violation – Denial of a Bond Hearing

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

71. Even if Respondents classify Petitioner under 8 U.S.C. § 1225(b), that classification does not eliminate constitutional constraints on detention. The Due Process Clause requires that civil detention be accompanied by a meaningful opportunity to obtain review of its necessity.

72. By taking the position that Petitioner is ineligible for bond, Petitioners denied his procedural rights guaranteed by the Due Process Clause of the Fifth Amendment to the U.S. Constitution.

COUNT II

Procedural Due Process- Impermissible Retroactive Application of *YAJURE HURTADO*

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

74. The Due Process Clause prohibits the Federal Government and its agents from depriving persons of life, liberty, and property without observing certain procedures. The right to fair notice is essential to procedural due process. Retroactive application of administrative decisions implicates "due process interests in fair notice, reasonable reliance, and settled expectations." *Monteon-Camargo v. Barr*, 918 F.3d 423, 430 (5th Cir. 2019) (quoting *De Niz Robles v. Lynch*, 803 F.3d 1165, 1169 (10th Cir. 2015)).

75. Respondents adopted a new interpretation of the INA and its regulations in *Yajure Hurtado* and *Buenrostro*, *supra*. Prior to *Yajure Hurtado* and *Buenrostro*, Respondents interpreted and applied the INA detention and release scheme to empower Respondents to detain and release or afford a bond hearing before an IJ to noncitizens who entered without inspection, unless their criminal history rendered them ineligible. This was accomplished under § 1226(a).

76. As recently as 2023, the BIA interpreted the INA to empower the DHS to choose whether to detain and release persons who entered without inspection either under § 1226(a) or § 1225(b). *Matter of Cabrera-Fernandez*, 28 I&N Dec. 747, 748 (BIA 2023). There, the noncitizens entered without inspection or admission and were detained shortly after entering the U.S. DHS detained and released them under § 1226(a). The noncitizens argued that their release constituted a parole because their detention (and release) could only have been accomplished through § 1225(b). The BIA firmly rejected that reading of the statute.

77. "For applicants for admission charged as inadmissible, DHS has authority to determine whether to initiate expedited removal proceedings under…8 U.S.C. § 1225(b)(1)(A)(i), or removal proceedings under section 240 of the INA, 8 U.S.C. § 1229a."). The BIA explained:

> This authority is illustrated in the Attorney General's decision in *Matter of D-J-*, 23 I&N Dec. 572, 572–76 (A.G. 2003), which involved a similar fact pattern. In that case, DHS apprehended a respondent shortly after he entered the United States without admission or parole and charged him with the same ground of inadmissibility at issue here [having entered without inspection or admission]. The Attorney General reviewed his eligibility for release from custody under section 236(a) of the INA, 8 U.S.C. § 1226(a). *Cf. Matter of M-S-*, 27 I&N Dec. 509, 510–13 (A.G. 2019) (addressing the detention and release of respondents whom DHS initially elects to place in expedited removal proceedings, but who are later transferred to section 240 removal proceedings after establishing a credible fear of persecution or torture). *Id.* at 748-49.

78. The BIA reiterated this reading of the INA's detention and release statutory scheme again in *Matter of Akhmedov,* 29 I&N Dec. 166 (BIA 2025). There, the noncitizen entered without inspection or admission in January 2022 and was subsequently detained in the interior of the U.S. in January 2025. The IJ granted the noncitizen's request for bond. In reviewing the DHS's appeal of the bond decision, the BIA made the uncontroversial observation that the noncitizen's bond request was "governed by the provision of section [§ 1226(a)] of the Immigration and Nationality Act." *Akhmedov*, 29 I&N Dec. at 166.

79. Retroactivity is greatly disfavored in the law. *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988). The Supreme Court has been emphatic that this aversion to retroactive rulemaking:

> is deeply rooted in our jurisprudence, and embodies a legal doctrine centuries older than our Republic. Elementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly; settled expectations should not be lightly disrupted. For that reason, the principle that the legal effect ofconduct should ordinarily be assessed under the law that existed when the conduct took place has timeless and universal human appeal.

Landgraf v. USI Film Prods., 511 U.S. 244, 265 (1994) (internal quotation and citations omitted).

> The Fifth Circuit, too, has instructed the BIA and immigration courts that it is patently unfair to subject noncitizens to new interpretations of immigration laws. This is a matter of due process and fair notice. The Court explained: "The leading case on administrative retroactivity' instructs that any disadvantages from the 'retroactive effects' of deciding a 'case of first impression . . . must be balanced against the mischief of producing a result which is contrary to a statutory design or to legal and equitable principles.' To apply that instruction, this court 'balances the ills of retroactivity against the disadvantages of prospectivity.' 'If that mischief of prospectivity is greater than the ill effect of the retroactive application of a new standard, it is not the type of retroactivity which is condemned by law.'

Monteon-Camargo, 918 F.3d at 430 (internal citations omitted).

80. Thus, if application of the new rule is significant and changes the legal landscape by updating an agency's earlier position, then retroactive application of the new rule alters basic presumptions of this administrative system. *Id.* at 431. "A 'presumption of prospectivity attaches to Congress's own work,' and it should generally attach when an agency 'exercises delegated legislative….authority.'" *Id.* (internal citation omitted).

81. In the alternative, and to the extent the Court determines that review under the Administrative Procedure Act is appropriate, Respondents' policies and practices are unlawful under the APA.

82. The retroactive application of *Yajure Hurtado* and *Buenrostro* is unfair and unreasonable and violates his due process rights.

COUNT III

Immigration and Nationality Act – Denial of Bond Hearing

83. Petitioner re-alleges and incorporates herein by reference every allegation set forth in the preceding paragraphs. Petitioner has the right to request to be released on bond by an IJ.

84. In the alternative, and to the extent the Court considers the statutory basis for detention, Respondents have misapplied the INA by denying Petitioner access to bond procedures

historically available under 8 U.S.C. § 1226(a).

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

86. To the extent review under the APA is available, Respondents' actions are arbitrary, capricious, and not in accordance with law. However, independent of the APA, Petitioner's continued detention without any mechanism for review violates the Constitution and is subject to habeas relief.

87. To date, numerous courts have ruled in favor of noncitizens challenging the denial of a bond hearing based on *Yajure Hurtado* and Respondents' interpretation of § 1225(b). *See, e.g., Valencia Zapata v. Kaiser*, No. 25-CV-07492-RFL, 2025 WL 2741654 (N.D. Cal. Sept. 26, 2025); *Roa et al. v. Albarran et al.*, No. 25-CV-07802-RS, 2025 WL 2732923 (N.D. Cal. Sept. 25, 2025); *Lepe v. Andrews*, No. 1:25-CV-01163-KES-SKO (HC), 2025 WL 2716910 (E.D. Cal. Sept. 23, 2025); *Singh v. Lewis*, No. 4:25-CV-96-RGJ, 2025 WL 2699219 (W.D. Ky. Sept. 22, 2025); *Barrera v. Tindall et. Al.,* No. 3:25-CV-541-RGJ, 2025 WL 2690565, (W.D. Ky. Sept. 19, 2025); *Chafla et al., v. Scott et al.*, No. 2:25-CV-00437-SDN, 2025 WL 2688541 (D. Me. Sept. 21, 2025); *Carlon v. Kramer,* No. 4:25CV3178, 2025 WL 2624386 (D. Neb.

Sept. 11, 2025); *Vazquez v. Feeley et al.,* No. 2:25-CV-01542-RFB-EJY, 2025 WL 2676082 (D. Nev. Sept. 17, 2025); *Guzman v. Andrews*, No. 1:25-CV-01015-KES-SKO (HC), 2025 WL 2617256 (E.D. Cal. Sept. 9, 2025).

88. The unlawful application of § 1225(b)(2) to Petitioner mandates his continued detention and violates the INA and its implementing regulations, 8 C.F.R. §§ 236.1, 1232.1 and 1003.19.

89. Respondents' disregard of Petitioner's right to a bond hearing violates the INA.

COUNT IV

Violation of the APA
Contrary to Law and Arbitrary and Capricious Agency Policy

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

91. In the alternative, and only to the extent the Court finds APA review appropriate, the APA provides that a "reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

92. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the U.S. who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those noncitizens who are not arriving in the U.S., who are not making an application for admission, and are detained far from the international border. Noncitizens are detained (and released) under § 1226(a) and are eligible for release on bond, unless they were initially detained pursuant to § 1225(b)(1) or (b), or were detained under § 1226(c) or § 1231.

93. Nonetheless, Respondents have adopted a policy and practice of applying § 1225(b)(2) to noncitizens like Petitioner who are not arriving in the U.S., were not arrested near the international border, and have made no application for admission. Respondents have failed to

articulate reasoned explanations for their decisions, which represent changes in the agencies' policies and positions; have considered factors that Congress did not intend to be considered; have entirely failed to consider important aspects of the problem; and have offered explanations for their decisions that run counter to the evidence before the agencies. Respondents' position also reflects an unexplained departure from prior agency precedent, further underscoring the arbitrariness of the current detention framework.

94. The application of § 1225(b)(2) and *Yajure Hurtado* to Petitioner is arbitrary, capricious, and not in accordance with law, and as such, it violates the APA. *See* 5 U.S.C. § 706(2). Further, their refusal to provide him with a bond hearing violates § 706(1) of the APA.

COUNT V

Violation of the APA
Impermissible Retroactive Application of New Legal Interpretation

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

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

97. To the extent the Court considers Respondents' reliance on recent agency interpretations, the retroactive application of those interpretations to Petitioner further underscores the unlawfulness of his detention. Respondents adopted a new interpretation of the INA and its regulations in *Matter of Yajure Hurtado* and *Q. Li*, *supra*. Prior to these BIA decisions, Respondents interpreted and applied the INA detention and release scheme to empower Respondents to detain and release or afford a bond hearing before an IJ to most people who

entered without inspection, unless their criminal history rendered them ineligible. This was accomplished under § 1226(a).

98. Regardless of the statutory classification applied, the critical defect remains unchanged: Petitioner is detained without any mechanism to obtain review of his custody. The retroactive application of new agency interpretations only amplifies the constitutional concerns presented by this detention, and as such, it violates the APA. *See* 5 U.S.C. § 706(2).

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

1. Issue an Order declaring that Petitioner is detained under 8 U.S.C. § 1226(a);
2. Issue an order requiring Respondents to provide Petitioner with a constitutionally adequate bond hearing before an immigration judge within seven (7) days, at which the government bears the burden of justifying continued detention;
3. Order that, if such a hearing is not provided within that time, Petitioner shall be immediately released from custody;
4. Grant reasonable attorneys' fees and costs as permitted by law; and
5. Grant such other relief as the Court deems just and proper.

Respectfully submitted,



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Dated: March 24, 2026

Attorney for Petitioner

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

I represent Petitioner 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 24th day of March, 2026.

Iris Guerra Bravo

CERTIFICATE OF SERVICE

I, the undersigned, certify that a true and exact copy of this Petition for Writ of Habeas Corpus Pursuant to 28 USC 2241 was electronically filed with the District Clerk of the Southern District of Texas, Laredo Division, on March 24, 2026 and has been served upon the following via the Court's CM/ECF filing system and U.S. Mail:

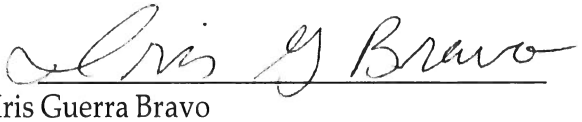
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