FILED
U.S. District Court
District of Kansas
04/14/2026
Clerk, U.S. District Court
By: SND Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS
AT KANSAS CITY

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| MARIO ALBERTO BAUTISTA CERVANTES,<br>*Petitioner,* | ) Case No. 26-3089-JWL<br>) |
| v. | ) |
| | ) A# [redacted] |
| MISTY MACKEY, WARDEN OF MIDWEST REGIONAL RECEPTION CENTER;<br>TODD M. LYONS, Acting Director of Immigration and Customs Enforcement;<br>UNITED STATES DEPARTMENT OF HOMELAND SECURITY;<br>MARKWAYNE MULLIN, Secretary, U.S. Department of Homeland Security;<br>TODD BLANCHE, Acting U.S. Attorney General;<br>In their official capacities,<br>*Respondents.* | ) |

**PETITION FOR WRIT OF HABEAS CORPUS**

The Petitioner, Mario Alberto Bautista Cervantes, by and through his own and proper person and through his attorney, Rekha Sharma-Crawford, petitions this Honorable Court to issue a Writ of Habeas Corpus to review his unlawful detention in violation of his constitutional and statutory rights.

**Introduction**

1. The question before this Court is one that this Court has already answered repeatedly. In *Galdamez Orellana v. Welsh*, No. 26-3019-JWL, (D. Kan. Mar. 13, 2026), this court found that "the text of Section 1225(b)(2)(A) imposes a separate requirement that the alien be 'seeking admission' that is not satisfied in the case of an already-present alien"). This conclusion was again reached by this Court in *Solaya Clavero v. Welsh*, No. 25-3278-JWL, (D. Kan. Mar. 16, 2026) (following *Galdamez Orellana* and ordering a bond hearing under Section 1226(a)). And once again in *Siddhu v. Mackey et al*, (D. Kan. Apr. 14,

2026). The issue here is the same, and the Court need only rely on its own holdings to grant relief in the instant matter.

2. Petitioner, a native and citizen of Mexico, is presently held in the physical custody of Respondents at the Midwest Regional Reception Center in Leavenworth, Kansas. His continued confinement is unlawful, as the Department of Homeland Security ("DHS") has improperly determined that he is subject to mandatory detention.

3. Petitioner has been present in the United States since April 2005. Petitioner has no criminal record.

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

5. Petitioner's detention is a substantial deprivation and burden that puts Petitioner and his family at risk without his support. He is the father of 3 children ages 19, 12, and 10. The 19-year-old suffers from epilepsy.

6. Petitioner is currently in removal proceedings before the Immigration Court where he has a scheduled initial appearance on April 15, 2026, at 8:30am.

7. Petitioner's detention became unlawful on April 3, 2026, when he was taken into custody by ICE/ERO officials after ICE conducted a traffic stop, without any other law enforcement present. Petitioner was arrested in the area of I-29 at exit 12 while he was the driver of a pickup truck. Petitioner is employed by a painting and construction company. The truck displayed the logo of the company on it and construction ladders were visible from its bed. Petitioner had not committed any traffic violation. Despite this, he was stopped by ICE and arrested.

8. Petitioner's continued detention is an unlawful violation of due process and an incorrect interpretation of immigration law.

9. Petitioner respectfully requests the Court order Respondents to show cause why this Petition should not be granted. *See* 28 U.S.C. § 2243.

**Jurisdiction and Venue**

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

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

12. This action is brought to compel the Respondents, officers of the United States, to accord Petitioner the due process of law to which he is entitled under the Fifth and Fourteenth Amendments of the United States Constitution.

13. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, 28 U.S.C. § 1331 (federal question jurisdiction), and 28 U.S.C. § 1361 (mandamus).

14. Venue is proper because Petitioner is presently detained by Respondents at the Midwest Regional Reception Center located in Leavenworth, Kansas, which is located within the District. 28 U.S.C. § 1391(b), (e)(1).

## Parties

15. Petitioner Mario Alberto Bautista Cervantes, a native and citizen of Mexico, is currently held in immigration detention at the Midwest Regional Reception Center located in Leavenworth, Kansas.

16. Respondent Misty Macky, the Warden of the Midwest Regional Reception Center serves as Petitioner's immediate physical custodian, with direct responsibility for his daily confinement. The facility is located at 100 Highway Terrace, Leavenworth, KS 66048.

17. Todd M. Lyons serves as the Acting Director of Immigration and Customs Enforcement ("ICE"), and in that role bears immediate custodial responsibility for Petitioner and oversees Petitioner's detention and removal. He is named herein solely in his official capacity. ICE maintains its principal offices at 500 12th Street SW, Washington, D.C. 20536.

18. The United States Department of Homeland Security is the executive agency charged with the detention of noncitizens, including Petitioner. DHS is located at 800 K Street, N.W. #1000, Washington, District of Columbia 20528.

19. Markwayne Mullin is the Secretary of the Department of Homeland Security, charged with administering and enforcing the Immigration and Nationality Act ("INA"). As the official overseeing ICE, he bears ultimate custodial authority over Petitioner. Secretary Mullin is named in his official capacity only. He may be reached at U.S. Department of Homeland Security, 800 K Street, N.W. #1000, Washington, District of Columbia 20528.

20. Todd Blanche is the Acting Attorney General of the United States, heading the Department of Justice, which includes the Executive Office for Immigration Review and the

immigration courts it administers. He is named in his official capacity. His office is located at the U.S. Department of Justice, 950 Pennsylvania Avenue NW, Washington, D.C. 20530.

**Custody**

21. Petitioner is being unlawfully detained by ICE and he is not likely to be removed in the reasonably foreseeable future since his removal proceedings are ongoing.

**Factual and Procedural Background**

22. Petitioner is a native and citizen of Mexico. He has been present in the United States since April, 2005. **Ex, A, NTA**

23. Petitioner was recently detained by ICE after a traffic stop initiated by ICE ERO on the highway in the area of I-29 at exit 12. He was then transferred to the Midwest Regional Reception Center located in Leavenworth, Kansas where he remains in custody without a bond hearing. **Ex. B, ICE Locator Sheet**

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

25. Before September 5, 2025, just 3 months prior, the official position of the BIA was that the Immigration Judge had power to grant release on bond under INA section 236(a) if the person did not have a disqualifying criminal record and the judge was satisfied, after a hearing, that the person was not a danger to the community or a flight risk. *Matter of Akhmedov*, 29 I&N Dec. 166 (BIA 2025).

26. Moreover, ICE had a longstanding practice of treating noncitizens taken into custody while living in the United States as detained pursuant to 8 U.S.C. section 1226(a). *Rocha Rosado v. Figueroa*, 2025 WL 2337099, (D. Arizona August 11, 2025); *see Loper Bright Enter. v. Raimondo*, 603 U.S. 369, 386 (2024) ("[T]he longstanding practice of the government—like any other interpretive aid—can inform [a court's] determination of what the law is."). However, this position changed on July 8, 2025, when internal "interim guidance" was released regarding a change in their longstanding interpretation of which noncitizens are eligible for release on bond. ICE's position is that only those already admitted to the U.S. are eligible to be released from custody during their removal proceedings, and that all others are subject to mandatory detention under 8 U.S.C. § 1225, instead of 8 U.S.C. § 1226, and will remain detained with only extremely limited parole options at ICE's discretion.

27. Petitioner's continued detention, without the possibility to request a bond hearing, separates him from his family, prohibits him from being able to financially provide for his family, and inhibits his removal defense in many ways, including by making it difficult to communicate with witnesses, gathering evidence, and afford legal representation, among other related harm.

28. Since the September 5, 2025, BIA decision, Petitioner now has no opportunity to seek a request for bond redetermination and must remain detained away from his family, and support system and continues to be subjected to the aforementioned harms.

29. Because Respondent's removal proceedings remain pending and there is no final hearing date set in his case, there is little likelihood that Petitioner's removal will occur in the reasonably foreseeable future.

## Legal Framework

**Due Process Clause**

30. "It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings." *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

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

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

**Detention Provisions under the Immigration and Nationality Act**

33. The Immigration and Nationality Act is codified at Title 8 of the United States

Code, Section 1221 *et seq.*, and controls the United States Government's authority to detain noncitizens during their removal proceedings.

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

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

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

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

4) **Detention Following Completion of Removal Proceedings** **8 U.S.C. § 1231(a)** generally requires the detention of certain noncitizens who are subject to a final removal order during the 90-day period after the completion of removal proceedings and permits the detention of certain noncitizens beyond that period. *Id.* at § 1231(a)(2), (6).

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

36. Following enactment of the IIRIRA, the Executive Office for Immigration

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

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

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

38. When parole is terminated upon written notice, the noncitizen "shall be restored to the status that he or she had at the time of parole." 8 CFR § 212.5(e)(2)(i).

39. Before passage of the Immigration Reform and Immigrant Responsibility Act ("IRIRA"), the predecessor statute to § 1226(a) governed deportation proceedings for all noncitizens arrested within the United States, and like § 1226(a), included a provision allowing for discretionary release on bond. *See* 8 U.S.C. § 1252(a)(1) (1994).[2] After passing the IIRIRA, Congress declared the new § 1226(a) "restates the current provisions in [the

[2] *See* 8 U.S.C. § 1252(a)(1) (1994) ("Pending a determination of deportability...any [noncitizen]...may, upon warrant of the Attorney General, be arrested and taken into custody."); Hose v. Immigration & Naturalization Serv., 180 F.3d 992, 994 (9th Cir. 1999)(noting a "deportation hearing" was the "usual means" of proceeding against an alien physically in the United States).

predecessor statute] regarding the authority of the Attorney General to arrest, detain, and release on bond" a noncitizen "who is not lawfully in the United States." H.R. Rep. No. 104-469, pt. 1, at 229. *See also* H.R. Rep. No. 104-828, at 210. Because noncitizens like Petitioner were entitled to discretionary detention under § 1226(a)'s predecessor statute, and Congress declared the statute's scope unchanged by IIRIRA, the Court should interpret § 1226 to allow for a discretionary release on bond for noncitizens in a situation similar to Petitioner.

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

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

42. In *Jennings v. Rodriguez*, the Supreme Court analyzed the statutory sections in question, 8 U.S.C. section 1225 and 8 U.S.C. 1226. 583 U.S. at 287. The Court held that section 1225(b) "applies primarily to aliens seeking entry into the United States." *Id.* at 297 Then, the Court noted that section 1226 "applies to aliens already present in the United States." *Id.* At 303.

43. The Court specifically found that "Section 1226(a) creates a default rule for those aliens by permitting- but not requiring- the Attorney General to issue warrants for their arrest and detention pending removal proceedings. Section 1226(a) also permits the Attorney General to release those aliens on bond, 'except as provided in subsection (c) of

this section.'" (subsection pertains to aliens who fall into categories involving criminal offenses or terrorist activities). Id. At 303. "Federal regulations provide that alien detained under §1226(a) receive bond hearings at the outset of detention." *Id.* at 306; 8 CFR 236.1(d)(1), 1236.1(d)(1)

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

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

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

47. In other words, the plain language of § 1225 applies to immigrants currently seeking admission into the United States at the nation's border or another point of entry. It

does not apply to noncitizens "already present in the United States"—only § 1226 applies in those cases. *See Jennings*, 583 U.S. at 303.

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

49. The *Matter of Yajure Hurtado* decision in requires the Court to ignore critical provisions of the INA and it also renders portions of the newly enacted provisions of the INA superfluous. "When Congress amends legislation, courts must presume it intends its amendment to have real and substantial effect." *Van Buren v. United States*, 593 U.S. 374, 393 (2021).

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

51. Additionally, "[w]hen Congress adopts a new law against the backdrop of a

longstanding administrative construction, the court generally presumes that the new provision works in harmony with what came before." *Monsalvo v. Bondi*, 604 U.S., 145 S. Ct. 1232, 1242 (2025). Congress adopted the Act against the backdrop of decades of agency practice applying § 1226(a) to immigrants like Petitioner, who are present in the United States but have not been admitted or paroled. *Rodriguez*, 2025 WL 1193850, at *15; *Martinez*, 2025 WL 2084238, at *4; 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) ("Despite being applicants for admission, aliens who are present without having been admitted or paroled . . . will be eligible for bond and bond redetermination.").

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

53. The analysis and holding by the BIA in *Matter of Yajure Hurtado* has also consistently been rejected by district courts across the country over the last several months. *See* Inspection and Expedited Removal of Aliens, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) (explaining that "[d]espite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination").

54. This Court is not required, and should not, give deference to the recent Board decision cited in Respondent's brief. In *Loper Bright*, the Supreme Court was clear that "[c]ourts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority," and indeed "may not defer to an agency interpretation

of the law simply because a statute is ambiguous." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412 (2024). Rather, this Court can simply look to the Supreme Court's own words in *Jennings* that held that for decades, § 1225 has applied only to noncitizens "seeking admission into the country"—i.e., new arrivals, and that this contrasts with § 1226, which applies to noncitizens "already in the country." *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018).

55. The text of sections 1225 and 1226, together with binding Supreme Court precedent interpreting those provisions and the repeated representations of the government in Petitioner's case before the Court confirm that he is subject to section 1226(a)'s discretionary detention scheme.

56. The proper remedy for unlawful detention is release, as consistently held by courts across the nation. *Fu v. Noem et al.*, 6:26-cv-03063 (W.D. Mo. Feb. 17, 2026); *Poponete v. Noem et al.*, 6:26-cv-03091 (W.D. Mo. Feb. 17, 2026); *Beltran Barrera v. Tindall*, 2025 WL 2690565, at *7 (W.D. Ky. Sep. 19, 2025); *Roble v. Bondi*, --- F.Supp.3d ---, 2025 WL 2443453, at *5 (D. Minn. Aug. 25, 2025) (ordering petitioner's "release from custody as a remedy for ICE's illegal re-detention"); *Munaf v. Geren*, 553 U.S. 674, 693 (2008); *see also Espinoza*, 2025 WL 2675785, at *11; *Ramirez Clavijo v. Kaiser*, 2025 WL 2419263, at *6 (N.D. Cal. Aug. 21, 2025); *Munoz Materano v. Arteta*, --- F.Supp.3d ---, 2025 WL 2630826, at *20 (S.D.N.Y. Sept. 12, 2025).

57. A bond determination by a DHS officer or an immigration judge would not remedy the core constitutional violation at issue here. "[Petitioner's] detention was unlawful from its inception because ICE detained [him] under the wrong statute and without any notice or opportunity to be heard, much less the procedures required

under section 1226(a). In this situation a post-deprivation bond hearing before a DHS officer or even an immigration judge would provide no genuine opportunity to relief because the detention without adequate pre-deprivation procedures has already been carried out." *Rodriguez-Acuro v. Almovodar*, 2025 WL 3314420 (E.D.N.Y. Nov. 28, 2025); *Barco Mercado v. Francis*, --- F.Supp.3d ---, 2025 WL 3295903 (S.D.N.Y. Nov. 26, 2025); *AMM v. Thompson*, 2025 WL 3296316 (S.D. Tex. Nov. 18, 2025); *Lopez Benitez v. Francis*, 795 F.Supp.3d 475, 484 (S.D.N.Y. 2025).

58. If this court finds immediate release inappropriate, Petitioner requests that this court order bond hearing within five days, where the burden is on the Government to prove by clear and convincing evidence that the detainee poses a danger or flight risk. *Ochoa Ochoa v. Noem*, 2025 WL 2938779 (N.D. Ill. Oct. 16, 2025); *Lopez-Alvarez v. Ripa*, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025) (ordering a bond hearing within seven day or release); *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025) (same); *Roman v. Noem*, 2025 WL 2710211 (D. Nev. 23, 2025).

## Claims for Relief

### FIRST CAUSE OF ACTION
### Violation of the Due Process Clause of the Fifth Amendment of the United States Constitution

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

60. The Due Process Clause asks whether the government's deprivation of a person's life, liberty, or property is justified by a sufficient purpose. Here, there is no question that the government has deprived Petitioner of his liberty by refusing him the opportunity to request a bond hearing.

61. The government's detention of Petitioner is unjustified. Respondents have not demonstrated that Petitioner needs to be detained. *See Zadvydas*, 533 U.S. at 690 (finding immigration detention must further the twin goals of (1) ensuring the noncitizen's appearance during removal proceedings and (2) preventing danger to the community). There is no credible argument that Petitioner cannot be safely released back to his community and family.

62. The *Matter of Yajure Hurtado* decision wrongly interprets the Immigration and Nationality Act.

63. This Court is not required to give deference to *Matter of Yajure Hurtado*. In *Loper Bright*, the Supreme Court was clear that "[c]ourts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority," and indeed "may not defer to an agency interpretation of the law simply because a statute is ambiguous." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412 (2024).

64. Rather, this Court can simply look to the Supreme Court's own words in *Jennings* that held that for decades, § 1225 has applied only to noncitizens "seeking admission into the country"—i.e., new arrivals, and that this contrasts with § 1226, which applies to noncitizens "already in the country." *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018). By keeping Petitioner detained today, his detention is unconstitutional as applied to him and in violation of his due process rights. Petitioner should have the opportunity to have a bond hearing before an Immigration Judge.

65. By issuing its decision in *Matter of Yajure Hurtado*, the BIA has taken nearly all bond authority away from Immigration Judges.

66. For these reasons, Petitioner's detention violates the Due Process Clause of

the Fifth Amendment.

**SECOND CAUSE OF ACTION**
**Violation of the Immigration and Nationality Act**

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

68. Petitioner has been detained and will not be afforded the opportunity to have a bond redetermination hearing before an Immigration Judge pursuant to *Matter of Yajure Hurtado*.

69. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. Mandatory detention 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) and are eligible for release on bond, unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

100. The BIA has wrongfully issued its decision in *Matter of Yajure Hurtado* finding all noncitizens, such as Petitioner, are subject to mandatory detention under § 1225(b)(2).

101. The unlawful application of § 1225(b)(2) to Petitioner violates the INA.

**Prayer for Relief**

WHEREFORE, Petitioner respectfully request that this Honorable Court:

A. Accept jurisdiction over this action;

B. Declare that Respondents' actions to detain Petitioner violate the Due Process Clause of the Fifth Amendment and violates the Immigration and Nationality Act;

C. Issue a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 and order Respondents to immediately release Petitioner, or in the alternative, order Respondent to schedule a bond hearing for Petitioner's removal proceedings within 5 days of the order and accept jurisdiction to issue a bond order where Respondents bear the burden of demonstrating that Petitioner poses a danger or flight risk;

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

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

Dated: April 14, 2026

Respectfully Submitted,

/s/ Rekha Sharma-Crawford
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**VERIFICATION**

I declare under a penalty of perjury that the facts set forth in the foregoing Verified Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge, information, and belief.

April 14, 2026

*s/Rekha Sharma-Crawford*
Rekha Sharma-Crawford