**UNITED STATES DISTRICT COURT**
**FOR THE WESTERN DISTRICT OF TEXAS**
**SAN ANTONIO DIVISION**

Guillermo Escatel Cordero,

Petitioner,

v.

Markwayne Mullin, Secretary of Homeland Security; Todd Blanche, Acting U.S. Attorney General; David Venturella, Acting Director of Immigration and Customs Enforcement; Miguel Vergara, San Antonio Field Office Director; Bobby Thompson, Warden at the South Texas Detention Center,

Respondents.

**Civil Case No.** 5:26-cv-04181

# VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

## I. INTRODUCTION

1. The Petitioner's prolonged civil detention in immigration custody without bond violates the Fifth Amendment's Due Process Clause and runs contrary to the Immigration and Nationality Act (INA). He accordingly seeks habeas relief ordering his immediate release from unlawful custody.

2. The Petitioner has resided in the United States for approximately 30 years. On or around June 20, 2026, the Petitioner was detained by the Respondents and subsequently issued a Notice to Appear (NTA) before an immigration judge for removal proceedings. *See* Exh. A. The Petitioner is currently detained without bond by the Respondents at the South Texas Detention Center in Pearsall, Texas. Since the Petitioner is neither dangerous nor a flight risk, he merits release from custody.

3. The Fifth Amendment's Due Process Clause prohibits the government from depriving any person of liberty without due process of law. That protection extends to all "persons" within the United States, "including [noncitizens], whether their presence is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (citations omitted); *see also Trump v. J.G.G.*, 604 U.S. 670, 673 (2025) ("'It is well established that the Fifth Amendment entitles aliens to due process of law' in the context of removal proceedings.'" (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)).

4. The Administration's application of mandatory immigration detention to the Petitioner, who has resided in the United States for approximately 30 years and has substantial family ties to this country, without an individualized bond hearing, fails to provide the requisite procedural due process and is unconstitutional. The Fifth Circuit's decision in *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. Feb. 6, 2026) did not address the constitutional issues surrounding mandatory immigration detention and, as such, does not preclude habeas relief. *See, e.g.*, *Cumbe Lema v. De Anda-Ybarra, et al.*, No. 3:26-cv-00249-KC (W.D. Tex. Feb. 9, 2026); *Hassen v. Noem*, et al., No. 3:26-cv-00048-DB, 2026 WL 446506 (W.D. Tex. Feb. 9, 2026).

5. The Petitioner's detention also violates the INA. Under the INA, when the Petitioner was arrested by immigration authorities it was either pursuant to a warrant under 8 U.S.C. § 1226(a) or without a warrant under 8 U.S.C. § 1357(a)(2).

6. If there is a warrant issued under § 1226(a), then that is the statute governing his detention and he is afforded a bond hearing under the statute's express terms, which is being unlawfully denied. *Buenrostro* does not hold otherwise since that case confronted noncitizens who were undoubtedly in custody under 8 U.S.C. § 1225(b)(2). *See Buenrostro*, 166 F.4th at 500 ("DHS commenced removal proceedings under 8 U.S.C. § 1229a against both petitioners, directing that

they be detained under 8 U.S.C. § 1225(b)(2)(A) for the duration of those proceedings."). The Fifth Circuit held that noncitizens detained under § 1225(b)(2)(A), are not entitled to bond hearings.[1] *Id.* By contrast, the Petitioner maintains that if he was issued a warrant under § 1226(a), he is not detained under § 1225(b)(2)(A) and under the terms § 1226(a) a bond hearing is authorized.

7. Warrantless arrests under § 1357(a)(2) are only permitted when the non-citizen is an escape risk. The Petitioner was not trying to escape immigration authorities when he was arrested, and any warrantless arrest was not justified.

8. Petitioner files this petition seeking a writ of habeas corpus ordering his immediate release from custody without the imposition of an ankle monitor. Should the Court order a bond hearing, Petitioner requests that the Court require DHS to bear the burden of justifying continued detention by demonstrating, by clear and convincing evidence, that Petitioner poses either a danger to the community or a flight risk. *See Erazo Rojas v. Noem et al.*, No. EP-25-CV-443-KC, 2025 WL 3038262, at *4 (W.D. Tex. Oct. 30, 2025) (holding that "when ordering a bond hearing as a habeas remedy" the burden shifts to the Government).

## II. PARTIES

10. Petitioner is currently detained in immigration detention at the South Texas Detention Center in Pearsall, Texas.

11. Respondent Markwayne Mullin is the Secretary of the Department of Homeland Security (DHS) and is charged with implementing the immigration laws of the United States. Secretary Mullin is being sued in his official capacity.

[1] Although the Eighth Circuit followed *Buenrostro*, the Second, Sixth, and Eleventh Circuits decided to the contrary. *See Avila v. Bondi*, 170 F.4th Cir. 1128 (8th Cir. 2026); *Barbosa de Cunha v. Freden*, Case No. 25-3141, 2026 U.S. App. LEXIS 12201 (2d. Cir. April 28, 2026); *Hernandez Alvarez v. Warden, Fed. Det. Ctr. Miami*, --- F.4th ---, 2026 WL 1243395 (11th Cir. 2026); *Lopez-Campos et al. v. Raycraft, et al.*, No. 25-1965 (6th Cir. May 11, 2026).

12. Respondent Todd Blanche is the Acting Attorney General for the United States and is charged with overseeing the Executive Office of Immigration Review (EOIR). Acting Attorney General Blanche is being sued in his official capacity.

13. Respondent David Venturella is the Acting Director of the Immigration and Customs Enforcement (ICE), a sub-agency of Homeland Security. It is under ICE's authority that the Petitioner is being held without bond. Acting Director Venturella is being sued in his official capacity.

14. Respondent Miguel Vergara is the Field Office Director for the San Antonio ICE Field Office. It is under Respondent Vergara's order that the Petitioner is in immigration custody. Respondent Vergara is being sued in his official capacity.

15. Respondent Bobby Thompson is the Warden and/or immediate custodian at the South Texas Detention Center in Pearsall, Texas. Respondent Thompson is being sued in his official capacity.

## III. JURISDICTION

16. This Court has subject matter jurisdiction over Petitioner's petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. The Court also has jurisdiction pursuant to 28 U.S.C. § 1331 (federal question jurisdiction) inasmuch as the case is a civil action arising under the laws of the United States.

17. Although only the Court of Appeals has jurisdiction to review removal orders directly through a petition for review, *see* 8 U.S.C. §§ 1252(a)(l), (a)(5), (b), District Courts have jurisdiction to hear habeas corpus claims by noncitizens challenging the lawfulness or constitutionality of their detention by ICE. *See, e.g.*, *Jennings v. Rodriguez*, 583 U.S. 281, 292-96 (2018); *Demore v. Hyung Joon Kim*, 538 U.S. 510, 516-17 (2003); *Zadvydas v. Davis*, 533 U.S.

678, 687-88 (2001).

18. Venue is proper in this district because the Petitioner is detained within this district, and a substantial amount of the events giving rise to this claim occurred within this district. 28 U.S.C. § 1391(e)(1).

## IV. FACTS

19. The Respondents charge that the Petitioner entered the United States without inspection and is consequently subject to removal. *Exh.* A.

20. The Petitioner has resided in the United States for approximately 30 years and has substantial family ties in the United States, including 5 U.S. citizen children who reside with him. The Petitioner's wife and mother of his children passed away approximately 6 years ago.

21. On or around June 20, 2026, the Petitioner was detained by ICE agents for unknown reasons. He was issued an NTA and placed in traditional removal proceedings before an immigration judge. The NTA alleges, in part, that the Petitioner entered the country without admission or parole. His removal proceedings are pending before the immigration court.

22. To date, the Respondents have failed to produce any warrant for the Petitioner's arrest.

## V. LEGAL FRAMEWORK REGARDING MANDATORY IMMIGRATION DETENTION AND BOND ELIGIBILITY

### A. The Respondents must apply the immigration detention statutes in compliance with the Constitution.

23. The Fifth Circuit's decision in *Buenrostro* did not address the constitutional issues surrounding mandatory immigration detention and, as such, does not preclude habeas relief. *See, e.g.*, *Sanchez v. Noem*, No. 3:25-cv-00403-DCG, 2026 WL 596133, *12 (W.D. Tex. Mar. 2, 2026); *Cumbe Lema v. De Anda-Ybarra, et al.*, No. 3:26-cv-00249-KC (W.D. Tex. Feb. 9, 2026); *Hassen*, 2026 WL 446506, at *2 n. 1.

25. The Fifth Amendment's Due Process Clause prohibits the government from depriving any person of liberty without due process of law. That protection extends to all "persons" within the United States, "including [noncitizens], whether their presence is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (citations omitted); *see also Trump v. J.G.G.*, 604 U.S. 670, 673 (2025) ("'It is well established that the Fifth Amendment entitles aliens to due process of law' in the context of removal proceedings.") (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)).

26. Furthermore, the Constitution demands greater due process of law for those non-citizens who are within the United States than those seeking admission into the country. As was explained by a Court within this District:

> [O]ur immigration laws have long made a distinction between those aliens who have come to our shores seeking admission . . . and those who are within the United States after an entry, irrespective of its legality.' *Martinez v. Hyde*, No. 1:25-cv-11613-BEM, 2025 WL 2084238, at *8 (D. Mass. July 24, 2025) (quoting *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958)). "'In the latter instance the Court has recognized additional rights and privileges not extended to those in the former category who are merely "on the threshold of initial entry." *Id.* (quoting *Leng May Ma*, 357 U.S. at 187).

*Santiago v. Noem*, No. 3:25-cv-00361-KC, 2025 WL 2792588, at *20 (W.D. Tex. Oct. 1, 2025); *see also Oliva v. Bondi,* No. SA-26-CA-00850-XR, 2026 WL 912657, at *8 (W.D. Tex. Mar. 23, 2026) ("Thus, for noncitizens who have entered or otherwise been released into the interior and established a substantial presence in the United States, the "entry fiction" applicable to their removal proceedings gives way to their interest in freedom from detention under *Mathews v. Eldridge*."). Since the Petitioner was detained inside the borders of the United States years after he entered unlawfully, he holds more due process rights than those non-citizens arrested and detained at the country's border.

27. Indeed, the Petitioner's case is "materially indistinguishable from several others in which courts in this District have found a procedural due process violation." *Aguilar-Ramirez v. Mullin*, No. 5:26-cv-02102-FB, *9 (W.D. Tex. April 29, 2026) (*citing Perez v. Thompson,* No. -9- Case 5:26-cv-02102-FB, SA-26-CA-02187-XR, 2026 WL 1078577, at *4 (W.D. Tex. Apr. 17, 2026); *Rodriguez Brizuela v. Noem,* No. 5:26-CV-0279-JKP, 2026 WL 752257, at *5 (W.D. Tex. Mar. 12, 2026); *Lopez-Arevelo v. Ripa,* 801 F. Supp. 3d 668, 685-87 (W.D. Tex. 2025). The Court should follow those cases, find a procedural due process violation, and order the Petitioner's immediate release.

**i. Courts apply the three-pronged *Mathews* test to ensure a government decision to enforce mandatory civil detention complies with due process of law.**

28. "The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). To protect this "fundamental requirement," the Court found that the "dictates of due process generally requires consideration of three distinct factors:"

> (1) "the private interest that will be affected by the official action,"
>
> (2) "the [g]overnment's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail," and
>
> (3) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards."

*Id.* at 335; *Aguilar-Ramirez*, No. 5:26-cv-02102-FB, at 16; *Lopez-Arevelo v. Ripa*, 801 F. Supp. 3d 668, 685 (W.D. Tex. 2025) (quoting *Martinez v. Noem,* No. 5:25-cv-01007-JKP, 2025 WL 2598379, at *2 (W.D. Tex. Sept. 8, 2025)).

29. A weighing of the *Mathews* factors supports granting habeas relief.

**a. The Petitioner has a protected liberty interest in his freedom.**

30. "As to the first element of the *Mathews* test, Petitioner's private interest in being free from detention is strong." *Aguilar-Ramirez*, No. 5:26-cv-02102-FB at 16 (citing *Zadvydas*, 533 U.S. at 690: "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.)"

31. "The interest in being free from physical detention is the most elemental of liberty interests." *Martinez v. Noem*, No. 5:25-cv-01007-JKP, at *4 (quoting *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)). Indeed, the Petitioner's "'interest in being free from imprisonment' is 'the most significant liberty interest there is.'" *Calderon de Granados v. Mullin, et al.*, No. 5:26-cv-01483 OLG, at *5 (W.D. Tex. Mar. 30, 2026) (quoting *Bonilla Chicas v. Warden*, -- F. Supp. 3d --, No. 5:26-cv-00131, 2026 WL 538475, at *10 (S.D. Tex. Feb. 20, 2026)).

32. The Petitioner has a constitutionally protected liberty interest in residing freely within the United States during the pendency of his removal proceedings because he has lived in the United States for approximately 30 years and has developed substantial ties to this country. *See, e.g.*, *Calderon de Granados*, No. 5:26-cv-01483-OLG, at *4 (citing *Bonilla*, 2026 WL 538475, at *6); *Marceau v. Noem*, 3:26-cv00237-KC, 2026 WL 368953, at *1 (W.D. Tex. Feb. 9, 2026).

33. The Petitioner's liberty interests clearly weigh in his favor and "deserves great weight and gravity." *Calderon de Granados*, No. 5:26-cv-01483-OLG, at *5 (quoting *Viera v. De Anda*

*Ybarra*, 806 F. Supp. 3d 690, 701 (W.D. Tex. 2025); *Aguilar-Ramirez*, No. 5:26-cv-02102-FB at 16.

**b. The risk of erroneously depriving the Petitioner of his liberty is high because the Respondents apply no individualized assessment in making their determination to detain and there is no bond hearing available.**

34. The risk of a non-citizen being erroneously detained and deprived of liberty is extremely high considering that no court makes any individualized determinations regarding the noncitizen's alleged danger to the community or whether they are a flight risk. *Aguilar-Ramirez*, No. 5:26-cv-02102-FB at 17 ("Without an individualized hearing, there is substantial risk that noncitizens with a substantial presence in the United States who pose neither flight risk nor danger to the community will be detained."). Instead, an agent determines whether the person should be detained without a hearing before a neutral judge or any appeal to a higher authority.

35. The Respondents apply a blanket detention policy wherein they detain every noncitizen who entered the country without inspection. This blanket policy of detaining every applicant for admission "without any hearing or other individualized assessment of whether they pose any risk that would outweigh their liberty interest creates 'a very high risk of erroneous deprivation of liberty.'" *Calderon de Granados*, No. 5:26cv-01483-OLG, at *6 (citing *Bonilla Chicas*, 2026 WL 539475, at *11).

**c. The Respondents' justification for detaining the Petitioner does not outweigh the Petitioner's liberty interest.**

36. "[G]overnment detention violates th[e Due Process] Clause unless the detention is ordered in a *criminal* proceeding with adequate procedural protections . . . or, in certain special and narrow nonpunitive circumstances, . . . where a special justification . . . outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690. Therefore, "if Petitioner has a constitutionally protected liberty interest in residing freely within

the United States despite his status as an applicant for admission, then Respondents may not detain him during the pendency of his removal proceedings—notwithstanding the applicable mandatory detention provision in § 1225(b)—unless Respondents' 'special justification' for doing so 'outweighs' his liberty interest." *Calderon de Granados* No. 5:26-cv-01483-OLG, at *4 (citing *Zadvydas*, 533 U.S. at 690).

37. The Respondents "special justification" to detain the Petitioner "must 'outweigh' Petitioner's very weighty liberty interest." *Id.* at *5 (citing *Zadyvdas*, 533 U.S. at 690).

38. The Respondents' general interest in enforcing immigration laws "is subservient to the Constitution's protections." *Id.* (citing *Counselman v. Hitchcock*, 142 U.S. 547, 565 (1892)). This is particularly true when the Petitioner is neither a flight risk nor a danger and the Respondents are applying a blanket policy of detaining all noncitizens, including those individuals, like the Petitioner, who have resided in this country for years.

39. Moreover, the Respondents' interest in prosecuting removal proceedings deserves little weight when considering Petitioner's custody status since the removal proceedings continue regardless of detention status. *Cordero Pelico v. Kaiser*, No. 3:25-cv-07286EMC, 2025 WL 2822876, at *15 (N.D. Cal. Oct. 3, 2025) ("There is no concern with a hearing delaying the Government's efforts to remove Petitioner[] either. Any such delay would be minimal, and in any case, Petitioner[] [is] currently subject to full removal proceedings . . . Whether the Government conducts a pre-detention hearing—or, indeed, whether Petitioner[] [is] in detention or not—will not obstruct the removal process.").

39. Therefore, a proper weighing of the *Mathews*' factors supports a finding that the Petitioner is being detained in violation of due process of law. "In short, 'the Due Process Clause of the Fifth Amendment guarantees [Petitioner] adequate notice of the intent to revoke [his] prior release, an

individualized assessment of [his] flight risk and dangerousness, and an opportunity to respond at a hearing before [his] re-detention by ICE." *Calderon de Granados*, No. 5:26-cv-01483-OLG, at *6 (citing *Bonilla Chicas*, 2026 WL 539475, at *12). The Respondents' decision to detain the Petitioner without a bond hearing falls well short of satisfying this constitutional guarantee.

**ii. The Court should remedy this constitutional violation by ordering the Petitioner's immediate release.**

40. After deciding that the Petitioner has a protected liberty interest in being free from civil immigration custody, the Court must determine what procedure should be afforded to the Petitioner. *See Morrissey v. Brewer*, 408 U.S. 471, 481 (1972).

41. When a Court finds that detention is unlawful "the typical remedy for such detention is, of course, release." *Munaf v. Geren*, 553 U.S. 674, 693 (2008).

42. The deprivation of the Petitioner's constitutionally protected right to liberty "cannot be mitigated through a post-deprivation hearing." *Bonilla Chicas*, 2026 WL 539475, at *11; *see also Ochoa v. Vergara*, -- F. Supp. 3d --, No. 5:26-cv-00987-XR, 2026 WL 482211 (W.D. Tex. Mar. 10, 2026) (collecting cases granting release).

43. Moreover, courts across the country have recognized that post-habeas bond hearings have been fundamentally unfair. *See, e.g.*, *Zheng v. Rokosky*, No. 26-CV-01689, 2026 WL 800203 (D.N.J. Mar. 23, 2026); *Garcia Ortiz v. Henkey*, No. 1:26-CV-00043-BLW, 2026 WL 948275 (D. Idaho Apr. 7, 2026); *Perez Velasquez v. Bondi et al.*, 3:26-cv-01759-GPC-DDL (S.D. Cal. April 16, 2026).

43. The Court should accordingly grant the Petitioner's release from unlawful custody.

**B. Noncitizens arrested under a warrant authorized by 8 U.S.C. § 1226 are bond eligible under the express terms of that statute.**

44. Different immigration detention statutes create different detention regimes. *See Jennings*, 583 U.S. at 281 (explaining the different immigration detention statutes). A critical difference between § 1225(b)(2)(A) and § 1226(a) is that § 1225(b)(2)(A) provides for mandatory detention of non-citizens who entered the country without inspection, while § 1226(a) allows for bond eligibility for non-citizens within the same group.

45. In *Buenrostro*, the Court explained that §§ 1226 and 1225 have overlapping authority to detain non-citizens who entered the country without inspection:

> It is true that § 1226 applies to aliens in the United States. That it does so, however, does not preclude § 1225 from also applying to such aliens. As the government acknowledges, the two provisions overlap.

166 F.4th at 505. Thus, according to *Buenrostro*, Congress passed §§ 1226 and 1225 with the intention that each statute applies to noncitizens who enter the country illegally. To assess habeas relief, the Court must determine which statute is being applied to the Petitioner.

46. The mandatory nature of § 1225(b)(2) does not preclude bond hearings for noncitizens detained under § 1226 for at least the following reasons:

(1) The Court stated that the government's interpretation of the statutes, which it adopted, "does not render portions of § 1226 superfluous." *Id.* at 510. Thus, since § 1226 is not superfluous and, in part, covers noncitizens who entered the country without inspection, its provisions allowing bond for individuals who entered the country without inspection must have some applicability. To find otherwise would render § 1226's provisions permitting bond for noncitizens who entered the country without inspection a nullity and run contrary to *Buenrostro*'s finding that the statute is not superfluous.

(2) Second, although *Buenrostro* makes clear that the DHS's "full enforcement authority" under § 1225(b)(2) extends to all noncitizens who enter the country without inspection, the DHS is under no obligation to use all its authority. As the Fifth Circuit stated: "that prior Administrations decided to use less than their full enforcement authority under § 1225(b)(2) does not mean they lacked authority to do more." *Id.* at 506. For decades the Respondents opted not to use its full detention authority, which demonstrates that the agency is not mandated to use its full enforcement authority under § 1225(b)(2).

47. Although *Buenrostro* confirms that §§ 1225(b)(2) and 1226 overlap, it does not authorize the Respondents to invoke both simultaneously. Rather, *Buenrostro* addressed only whether DHS had authority to detain certain noncitizens under § 1225(b)(2). It did not address whether DHS may arrest under § 1226(a) and deny the procedural protections that Congress expressly attached to that statute. Indeed, *Buenrostro* expressly emphasized that § 1226 continues to apply to noncitizens present in the United States and remains operative. *Id.* at 505.

48. Thus, since §§ 1225(b)(2) or 1226(a) are not superfluous, but have overlapping authority, the Court must ascertain which statute governs the Petitioner's custody to determine whether habeas relief is merited.

**i. Section 1226(a)'s authority for a bond hearing applies when an arrest is effectuated by a warrant issued under that statute.**

49. Congress plainly stated that § 1226(a)'s detention authority is triggered "[o]n a warrant issued by the Attorney General . . . ."

50. By contrast, § 1225(b)(2)(A) contains no warrant requirement.

51. Therefore, when a non-citizen is arrested on a warrant issued by the Attorney General, then § 1226 is the statute that governs the non-citizen's detention, and a bond hearing is explicitly authorized. 8 U.S.C. § 1226(a)(1)(2).

52. Federal regulations confirm that when DHS arrests a noncitizen pursuant to § 1226, that statute governs custody determinations, including bond eligibility. *See* 8 C.F.R. § 236.1(c)(8) (providing for custody determinations and bond eligibility for aliens arrested under § 1226). These regulations implement Congress's statutory scheme and confirm that warrant-based arrests under § 1226 trigger the procedural protections associated with that statute.

53. Non-citizens detained under § 1226(a) are entitled to a bond hearing and when that bond hearing is unlawfully withheld, habeas relief is merited.

**ii. The Respondents' decision to detain a non-citizen under § 1226(a) is binding upon them.**

54. Once DHS invokes its detention authority—under either §§ 1225(b)(2) or 1226—it is bound by it. "It's 'a simple but fundamental rule . . . that a reviewing court, in dealing with a determination or judgment which an administrative agency alone is authorized to make, must judge the propriety of such action solely by the grounds invoked by the agency.' That means we look to what the agency said, not what it might have said." *DISH Network Corp. v. NLRB*, 953 F.3d 370, 379-380 (5th Cir. 2020) (citing *SEC v. Chenery Corp.*, 332 U.S. 194, 196 (1947)). Applying that rule to this case, the existence of a § 1226 warrant would unambiguously demonstrate that detention is under § 1226.

55. The Respondents cannot cancel a § 1226 warrant and retroactively reclassify the Petitioner's detention under § 1225(b)(2) simply to obtain a better litigation position. Allowing

DHS to arrest under § 1226's warrant authority while invoking § 1225's detention authority would render § 1226's warrant language meaningless, violating the principle that statutes must be interpreted to give effect to all provisions.

**iii. Warrantless arrests are not permitted unless the immigration agent has a reason to believe that the non-citizen is an escape risk.**

56. Warrantless arrests are authorized under 8 U.S.C. § 1357(a)(2), but only when the arresting officer has reason to believe that the non-citizen is likely to escape before a warrant can be obtained. The statute provides:

> (a) Any officer or employee of the Service authorized under regulations prescribed by the Attorney General shall have power without warrant—
> . . .
> (2) to arrest any alien who in his presence or view is entering or attempting to enter the United States in violation of any law or regulation made in pursuance of law regulating the admission, exclusion, expulsion, or removal of aliens, or to arrest any alien in the United States, **if he has reason to believe that the alien so arrested is in the United States in violation of any such law or regulation and is likely to escape before a warrant can be obtained for his arrest**, but the alien arrested shall be taken without unnecessary delay for examination before an officer of the Service having authority to examine aliens as to their right to enter or remain in the United States . . .

(emphasis added).

57. Any warrantless arrest made without a "reason to believe that the alien . . . is likely to escape" is without statutory authority and is unlawful. In this case, there was no reason to believe the Petitioner was likely to escape.

58. Applying these concepts to the Petitioner's case, if a § 1226 warrant was used to arrest the Petitioner, then habeas relief is merited since he is being detained without access to bond hearing. If the arrest was made without a warrant, then habeas relief is merited unless the Respondents effectuated the arrest with an articulated reason to believe the Petitioner was an escape risk.

## VI. EXHAUSTION OF ADMINISTRATIVE REMEDIES

59. The Petitioner has exhausted his administrative remedies to the extent required by law. It would be futile to require the Petitioner to file a bond redetermination request with the Immigration Court given that the BIA has already announced its decision on the issue of bond jurisdiction in *Matter of Yajure Hurtado*. 29 I&N Dec. 216 (2025). In fact, *Yajure Hurtado* states that "Immigration Judges lack authority to hear bond requests or to grant bond to aliens, like the respondent, who are present in the United States without admission." *Id.* at 225 (emphasis added).

## VII. CLAIMS FOR RELIEF

### Count I. Fifth Amendment Due Process Violation

60. The Respondents may not deprive a person of life, liberty, or property without due process of law. U.S. Const. Amend. V. The Petitioner has a weighty liberty interest as his freedom "from government . . . detention . . . lies at the heart of the liberty that [the Fifth Amendment] protects." *Zadvydas*, 533 U.S. at 690. "'Non-punitive detention in the immigration context violates the Due Process Clause,' [] absent 'adequate procedural protections' or a 'special justification' outweighing a petitioner's liberty interest." *Azalyar v. Raycraft*, No. 1:25-cv-916, 2026 WL 30741, at *3 (S.D. Ohio Jan. 2, 2026) (quoting *Padilla v. United States Immigr. & Customs Enf't*, 704 F. Supp. 3d 1163, 1172 (W.D. Wash. 2003); *Zadvydas*, 533 U.S. at 690).

61. Courts analyze procedural due process claims in two steps. *Ky. Dep't of Corrections v. Thompson*, 490 U.S. 454, 460 (1989). The first step asks whether the government deprived the claimant of a protected liberty or property interest; and, if so, the second asks whether the procedural safeguards the government provided to the claimant were constitutionally adequate. *See id.*

62. The Petitioner has a liberty interest in remaining free from custody. His arrest and detention occurred within the interior of the United States years after he entered the country.

63. The Respondents' detention of the Petitioner without bond—regardless of the detention statute they invoke—violates due process of law. The Petitioner was arrested within the United States years after his entry into the country. The place of arrest within the United States along with his physical presence in the United States, bolster his constitutional claim that a bond hearing is required.

64. A weighing of the *Mathews* factors overwhelmingly supports the Petitioner. The deprivation of his liberty interest based on his mandatory detention carries a high risk that the Petitioner's liberty is being erroneously deprived and should be remedied.

**Count II. Statutory Claim: Petitioner is eligible for bond under § 1226(a) and is not subject to mandatory detention under § 1225(b)(2).**

65. When DHS arrests a noncitizen pursuant to a warrant issued under 8 U.S.C. § 1226(a), DHS has invoked detention authority under that statute. Because § 1226(a) expressly authorizes release on bond, detention pursuant to § 1226(a) necessarily confers eligibility for a bond hearing. DHS cannot invoke § 1226(a) to arrest the Petitioner while simultaneously denying him the bond eligibility that Congress expressly attached to detention under that statute.

66. Respondents necessarily arrested Petitioner pursuant to 8 U.S.C. § 1226 or § 1357. If Respondents arrested Petitioner under § 1226—as evidenced by issuance of a warrant—then § 1226 governs detention and provides bond eligibility. Respondents cannot invoke § 1226 to arrest Petitioner and simultaneously invoke § 1225 to deny bond eligibility.

67. Section 1357 allows for a warrantless arrest only when there is a reason to believe that a non-citizen will escape before a warrant could be obtained. No evidence suggests that the

Petitioner in this case is an escape risk and nor have the Respondents provided evidence to the contrary. As such, any warrantless arrest under § 1357 was unlawful.

## VIII. PRAYER FOR RELIEF

For the foregoing reasons, and consistent with 28 U.S.C. § 1657(a), the Petitioner requests that the Respondents be cited to appear and that, upon due consideration, the Court promptly enter an order:

(1) Ordering the Respondents, pursuant to 28 U.S.C. § 2243, to demonstrate within five days why the Petitioner's writ of habeas corpus should not be granted;

(2) Under § 2243, ordering the Respondents to produce the warrant used to effectuate the Petitioner;

(3) Granting a writ of habeas corpus finding that the Petitioner's detention is unlawful and unconstitutional;

(4) Providing declaratory relief that the Petitioner's detention is unlawful;

(5) Ordering the Petitioner's immediate release from custody without an ankle bracelet;

(6) Ordering that the Respondents not transfer the Petitioner to any facility outside the boundaries of the Western District of Texas while this writ is pending; and

(7) Granting the Petitioner such other and further relief as the Court may deem just and proper.

Respectfully submitted,

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ATTORNEYS FOR PETITIONER

**VERIFICATION UNDER 28 U.S.C. § 2242**

Acting on behalf of the Petitioner, I verify that the foregoing factual allegations are true and correct as required by 28 U.S.C. § 2242.

/s/ Lance Curtright
Lance Curtright