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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

GILBERTO DE LA PENA RUIZ [redacted],

Petitioner,

v.

UNITED STATES DEPARTMENT OF HOMELAND SECURITY; MARKWAYNE MULLIN, SECRETARY, UNITED STATES DEPARTMENT OF HOMELAND SECURITY; TODD W. BLANCHE, ACTING ATTORNEY GENERAL; GREGORY J. ARCHAMBEAULT, FIELD OFFICE DIRECTOR, UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT, ENFORCEMENT AND REMOVAL OPERATIONS, ICE SAN DIEGO FIELD OFFICE; JEREMY CASEY, WARDEN, IMPERIAL REGIONAL DETENTION FACILITY,

Respondents.

Case No. '26CV4365 BAS JLB

PETITION FOR WRIT OF HABEAS CORPUS, PURSUANT TO 28 U.S.C. § 2241, AND REQUEST TO SHOW CAUSE; VERIFIED PETITION

1. Petitioner Gilberto de la Pena Ruiz (hereinafter "Petitioner"), by and through the undersigned counsel, seeks judicial review of his continued detention under 28 U.S.C. § 2241.

2. Petitioner is currently detained at the Imperial Regional Detention Facility in Calexico, California.

3. Petitioner is the beneficiary of an approved immigrant visa petition from his United States citizen spouse, Zulma Antonia Cecili, under sections 201(b)(2)(A)(i) and 204(a)(1)(A)(i) of the Immigration and Nationality Act (hereinafter "INA"), 8 U.S.C. §§ 1151(b)(2)(A)(i) and 1154(a)(1)(A)(i). See Pet'r App. at 6.[1] Federal immigration officials' approval of Petitioner's immigrant visa petition does not, alone, qualify him for lawful permanent resident status in the United States because he entered the United States without inspection and admission or parole in 2014. See 8 U.S.C. § 1255(a) (requiring a noncitizen to be "inspected and admitted or paroled into the United States" to qualify for an adjustment of status in the United States, subject to certain exceptions). Consequently, he must leave the United States and seek an immigrant visa at the United States Consulate General in Ciudad Juarez, Mexico, to become a lawful permanent resident of the United States, and live in the United States with his family.

4. On July 30, 2025, federal immigration officials approved the Petitioner's Form I-601A, Application for Provisional Unlawful Presence Waiver, and waived a potential ground of inadmissibility that he would face upon his departure from the United States, due to his prior unlawful presence in this country of at least one year. See Pet'r App. At 7; see also 8 U.S.C. §§ 1182(a)(9)(B)(i)(II), 1182(a)(9)(B)(v) (stating that a noncitizen who "has been unlawfully present in the

[1] "Pet'r. App." refers to the Appendix to Petition for Writ of Habeas Corpus, Pursuant to 28 U.S.C. § 2241, and its Exhibits. The Petitioner, through counsel, files the Appendix concurrently with this Petition.

United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible[,]" but providing for a waiver of that ground of inadmissibility). Federal immigration officials' approval of the Petitioner's application for a waiver of inadmissibility enables him to depart the United States and attend his immigrant visa interview in Mexico, without facing a bar on his re-entry to the United States on an immigrant visa.

5. On September 9, 2025, the United States Department of State informed the Petitioner that his immigrant visa application was complete, and that the agency intended to transfer his case to the United States Consulate General in Ciudad Juarez, Mexico for an immigrant visa interview. See Pet'r App. At 9.

6. On June 22, 2026, officers of United States Immigration and Customs Enforcement, Enforcement and Removal Operations (hereinafter "ICE-ERO") stopped and detained the Petitioner during a "targeted" surveillance operation "[i]n response to the President's declaration of a national emergency related to illegal immigration[]" at the Cumberland Head Ferry in Plattsburgh, New York. Pet'r App. at 27. ICE-ERO alleged that "[r]ecords checks" indicated that the Petitioner was "present in the United States illegally with only an I-130 petition approved[,]" and determined that he was "amenable to detention and arrest based on his current immigration status."

7. While the Petitioner's detention occurred during a vehicle stop, ICE-ERO did not stop and detain the Petitioner for committing a criminal offense or a traffic violation. See Pet'r App. at 27-28. DHS acknowledged that the Petitioner complied with ICE-ERO officers' demands to stop driving, roll down the driver's side window of his car, confirm his identity, turn off the car's ignition, provide the keys to the vehicle to ICE-ERO officers, and to exit the vehicle for his arrest. See

Pet'r App. at 28. Yet, ICE-ERO officers arrested and detained the Petitioner, even though they acknowledged that he had an approved immigrant visa petition and an approved waiver of inadmissibility, see Pet'r App. at 6-7, because the Petitioner had not returned to his country of origin to obtain an immigrant visa at the time of his arrest. See Pet'r App. at 28.

8. The Petitioner was unnecessarily detained, and remains apart from his United States citizen spouse, who suffers from thyroid cancer in Florida. See Pet'r App. at 3-5, 12-16. The Petitioner is at the final stages of obtaining a lawful immigration status in the United States through the aforementioned immigrant visa application. See Pet'r App. at 8-9. The Petitioner's continued detention by Respondents precludes him from leaving the United States for his immigrant visa interview, and from accessing his only opportunity to remain in the United States with his family.

9. ICE-ERO did not detain the Petitioner based upon his personal circumstances or any individualized facts. Instead, the Respondents detained the Petitioner because of their interpretation of President Trump's order that they "do all in their power to achieve the very important goal of delivering the single largest Mass Deportation Program in History."[2] Yet, the Respondents' power to detain noncitizens remains checked by law, as this country remains "a government of laws and not of men." Cooper v. Aaron, 358 U.S. 1, 23 (1958) (Frankfurter, J., concurring).

10. Recently, the United States Department of Homeland Security (hereinafter "DHS") placed the Petitioner in removal proceedings under section 240

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[2] See Pres. Donald Trump, @realDonaldTrump, Truth Social (June 15, 2025, 5:43pm) ("ICE Officers are herewith ordered, by notice of this TRUTH, to do all in their power to achieve the very important goal of delivering the single largest Mass Deportation Program in History.").

of the INA, 8 U.S.C. § 1229a. Unfortunately, under a new interpretation of noncitizen's bond eligibility under the Immigration and Nationality Act, the Immigration Judge believes that she lacks the power to consider the Petitioner's application for release on bond. See Pet'r App. at 24. Since the Petitioner has complied with requirements to obtain an immigrant visa at the United States Consulate General in Ciudad Juarez, Mexico, and is waiting for an interview with a consular officer, the Respondents' decision to detain the Petitioner have only wasted the Government's resources, the Court's resources, and the Petitioner's resources.

11. The Petitioner therefore respectfully requests that this Court issue a writ of habeas corpus and order his release from custody, with appropriate conditions of supervision if necessary. His continued detention under these circumstances serves no legitimate governmental purpose, and violates the humanitarian and constitutional principles that govern civil immigration custody.

II.

JURISDICTION

12. This Court has jurisdiction under 28 U.S.C. § 2241 because the Petitioner is in federal custody, and seeks a writ of habeas corpus challenging the legality of his continued civil detention by DHS, in violation of the Constitution and the laws of the United States.

13. After the REAL ID Act of 2005, Pub. L. No. 109-13, Div. B, 119 Stat. 231 (2005), the Court retains jurisdiction under 28 U.S.C. § 2241 to review constitutional and legal challenges to a noncitizen's detention in federal immigration custody that are "'independent of challenges of removal orders.'" Singh v. Holder, 638 F.3d 1196, 1211-12 (9th Cir. 2011) (quoting H.R. Rep. No. 109-72, at 175, reprinted in 2005 U.S.C.C.A.N. 240, 299).

14. The Court has original jurisdiction over this petition for writ of habeas corpus under 28 U.S.C. § 1331 because the Petitioner raises federal questions arising under the United States Constitution and the laws of the United States. This case involves the Respondents' construction and application of the Fifth Amendment to the United States Constitution, U.S. Const. amend. V, and 8 U.S.C. § 1225(b)(2)(A).

15. The Declaratory Judgment Act provides, in part, that "[i]n a case of actual controversy within its jurisdiction,...any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought." 28 U.S.C. § 2201(a). The law specifies that "[f]urther necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment." 28 U.S.C. § 2202.

16. This Court may grant relief to the Petitioner under 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201, et seq., and the All Writs Act, 28 U.S.C. § 1651.

III.

VENUE

17. Venue is proper in this Court under 28 U.S.C. § 2241(a) because the Petitioner is detained within the geographic boundaries of the United States District Court for the Southern District of California, at the Imperial Regional Detention Facility in Calexico, California.

IV.

EXHAUSTION AND REQUIREMENTS OF 28 U.S.C. § 2243

18. The Court must grant the petition for writ of habeas corpus or issue an order to show cause to Respondents "forthwith," unless the Petitioner is not entitled

to relief. See 28 U.S.C. § 2243. If an Order to Show Cause is issued, the Court must require the Respondents to file a return to the petition "within three days unless for good cause additional time, not exceeding twenty days, is allowed." Id.

19. Courts have long recognized the significance of the habeas corpus 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).

20. The Petitioner is "in custody" for the purpose of 28 U.S.C. § 2241 because he is detained by the Respondents at an immigration detention facility, under the direct control of the Respondents and their agents.

V.

PARTIES

21. The Petitioner is a national of Mexico. The Petitioner has been in DHS custody since on or about June 22, 2026. The Petitioner is currently detained by the Respondents at the Imperial Regional Detention Facility in Calexico, California.

22. Respondent DHS is the federal department responsible for implementing and enforcing our nation's immigration laws. DHS oversees its component agencies, such as ICE and United States Citizenship and Immigration Services (hereinafter "USCIS").

23. Respondent Markwayne Mullin is the Secretary of DHS. In that capacity, he is charged with the administration and enforcement of the nation's immigration laws. He is being sued in his official capacity.

24. Respondent Todd W. Blanche is the Acting Attorney General of the United States. In this capacity, he directs agencies within the United States Department of Justice, including the Executive Office for Immigration Review

(hereinafter "EOIR"), which houses the Immigration Courts and the Board of Immigration Appeals. Respondent Blanche is responsible for the administration of immigration laws, pursuant to 8 U.S.C. § 1103(g), and oversees EOIR. He is sued in his official capacity.

25. Respondent Gregory J. Archambeault is the Field Office Director of the U.S. Immigration and Customs Enforcement, Enforcement & Removal Operations, ICE San Diego Field Office, in San Diego, California. In this capacity, Mr. Archambeault is responsible for the administration of the immigration laws, the supervision of immigration confinement, and the institution of removal proceedings within the Area of Responsibility for the ICE San Diego Field Office, including the Imperial Regional Detention Facility in Calexico, California. As such, Mr. Archambeault is a custodian of Petitioner. He is being sued in his official capacity.

26. Respondent Jeremy Casey, the Warden for the Imperial Regional Detention Facility, is the Petitioner's immediate custodian, and therefore, is named as a Respondent. He is being sued in his official capacity.

VI.

STATEMENT OF FACTS

27. The Petitioner is a Mexican national. See Pet'r App. at 2.

28. The Petitioner entered the United States without inspection in 2014. He has resided in the United States continuously since 2014.

29. On November 22, 2021, the Petitioner married Zulma Antonia Cecili (now Zulma Antonia De La Pena), a naturalized United States citizen, in Coral Gables, Florida. See Pet'r App. at 3-5.

30. The Petitioner lived with his wife in Miami, Florida, before ICE-ERO officers detained him in June of 2026. See Pet'r App. at 19-23.

31. Mrs. Cecili was diagnosed with thyroid cancer in 2019. See Pet'r App. at 12-16.

32. On January 24, 2023, USCIS approved Mrs. Cecili's immigrant visa petition for the Petitioner under 8 U.S.C. §§ 1151(b)(2)(A)(i) and 1154(a)(1)(A)(i). See Pet'r App. at 6.

33. On July 30, 2025, USCIS approved the Petitioner's Form I-601A, Application for a Provisional Unlawful Presence Waiver, to cure a ground of inadmissibility for his prior unlawful presence in the United States for at least one year.[3] The agency's approval of a waiver of inadmissibility for the Petitioner enables him to travel abroad to pursue his immigrant visa petition at the United States Consulate General in Ciudad Juarez, Mexico, without incurring a ten-year bar on his re-admission to the United States under 8 U.S.C. §§ 1182(a)(9)(B)(i)(II), due to his prior unlawful presence in this country of at least one year.

34. As of September 9, 2025, the Petitioner's application for an immigrant visa with the United States Department of State has been complete. See Pet'r App., at 9. He is awaiting the scheduling of a final immigrant visa interview at the United States Consulate General in Ciudad Juarez, Mexico.

35. When the United States Consulate General in Ciudad Juarez, Mexico schedules an immigrant visa interview for the Petitioner, the Petitioner must depart the United States to obtain the immigrant visa for the United States, and to resume his residence with his family in this country.

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[3] The provisional waiver process "was developed [in March of 2013] to shorten the time that U.S. citizen's.family...members are separated from their relatives while those relatives are obtaining immigrant visas to become lawful permanent residents of the United States." USCIS, Provisional Unlawful Presence Waivers (updated Apr. 1, 2024), available at U.S. Citizenship & Immigration Servs., https://www.uscis.gov/family/family-of-us-citizens/provisional-unlawful-presence-waivers (visited July 23, 2026).

36. On June 22, 2026, ICE-ERO officers stopped and detained the Petitioner during a "targeted" surveillance operation "[i]n response to the President's declaration of a national emergency related to illegal immigration[]" at the Cumberland Head Ferry in Plattsburgh, New York. Pet'r App. at 27. ICE-ERO alleged that "[r]ecords checks" indicated that the Petitioner was "present in the United States illegally with only an I-130 petition approved[,]" and assessed that he was "amenable to detention and arrest based on his current immigration status." Id.

37. ICE-ERO officers observed the Petitioner driving a Black Toyota Tundra out of the city of Plattsburgh, New York, onto the Commodore Thomas MacDonough Highway, and towards the Cumberland Head Ferry "bound for Vermont." Pet'r App. at 27-28. ICE-ERO officers claimed that they identified the Petitioner as the driver of the vehicle through "previous surveillance," and decided to stop the vehicle. Id. at 28. The officers did not identify any other suspected criminal activity or traffic violations that justified the vehicle stop, aside from the unspecified surveillance. See id. at 27-28.

38. ICE-ERO officers acknowledged that the Petitioner "complied with ERO Officers commands during the stop, rolled down the window, turned off the vehicle and handed ERO Officers the keys to the vehicle[]" after the officers stopped the car. Id. at 28. The Petitioner "was asked to, and complied with," instructions to "step[] out of the vehicle at which point he was taken into custody." Id. ICE-ERO officers later served a Form I-200, Warrant of Arrest on the Petitioner. See id.

39. ICE-ERO officers alleged that the Petitioner "admitted to entering without inspection on the southern border." Id. They conceded that he had an approved immigrant visa petition and an approved waiver of inadmissibility, but determined that he was "ultimately arrestable at this time" because he "did not leave the United States and return to his country to adjust." Id. Accordingly, the ICE-ERO

officers concluded that the Petitioner was subject to removal under sections 212(a)(6)(A)(i) and 212(a)(7)(A)(i)(I) of the INA, 8 U.S.C. §§ 1182(a)(6)(A)(i) and 1182(a)(7)(A)(i)(I), and detained him for "immigration proceedings." Id. at 29.

40. On June 22, 2026, DHS initiated removal proceedings against the Petitioner under section 240 of the INA, 8 U.S.C. § 1229a. DHS officers have charged the Petitioner with being subject to removal under section 8 U.S.C. §§ 1182(a)(6)(A)(i) and 1182(a)(7)(A)(i)(I), for being a noncitizen who was present in the United States without inspection and admission or parole, and for being a noncitizen who lacked a valid, unexpired immigrant visa, a reentry permit, a border crossing card, or another entry document required by the INA or federal immigration regulations at the time of his application for admission into the United States. The United States Immigration Court in Imperial, California has scheduled a Master Calendar Hearing in the Petitioner's case on August 14, 2026.

41. ICE-ERO officers detained the Petitioner at the Buffalo Service Processing Center in Batavia, New York. See Pet'r App. 1. On July 6, 2026, ICE-ERO officers transferred the Petitioner to the Imperial Regional Detention Facility in Calexico, California. See id.

42. On July 13, 2026, Petitioner filed a request for bond re-determination with the United States Immigration Court in Imperial, California.

43. On July 16, 2026, a federal Immigration Judge in Imperial, California denied the Petitioner's request for a bond hearing, stating that "[t]he Court *presently* lacks jurisdiction to gran[t] bond, pursuant to Matter of Yajure-Hurtado, 29 I & N Dec. 216 (BIA 2025)." Pet'r App., at 24-25 (emphasis added).

44. On September 5, 2025, the Board of Immigration Appeals (hereinafter "BIA") issued its decision in Matter of Yajure Hurtado, 29 I. & N. Dec. 216, 228 (BIA 2025), holding that individuals who unlawfully entered the United States

without inspection, no matter how long the individual had "avoided apprehension," are subject to mandatory detention under INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A), and that Immigration Judges "have no authority to redetermine the custody conditions of an alien who crossed the border unlawfully without inspection, even if that [individual] has avoided apprehension for more than 2 years." The BIA's recent decision reverses three decades of established case law on bond eligibility, for persons who are present in the United States without inspection and admission or parole. Under the BIA's new interpretation of 8 U.S.C. § 1225(b)(2)(A), an Immigration Judge has determined that the Petitioner is subject to mandatory detention in ICE custody for his removal proceedings.

45. Without relief from the Court, the Petitioner faces the prospect of months, or even years, in immigration custody.

46. The Petitioner remains at the Imperial Regional Detention Facility in Imperial, California, thousands of miles away from his family, friends, colleagues, and his attorneys of record in Florida.

VII.

CAUSES OF ACTION

Count 1: Violation of Due Process Clause of the Fifth Amendment

47. The Petitioner realleges and incorporates by reference all preceding paragraphs as though fully set forth herein

48. The Due Process Clause of the Fifth Amendment to the United States Constitution prohibits the federal government from depriving any person of "life, liberty, or property, without due process of law[.]" U.S. Const. Amend. V. The right to due process extends to "all 'persons' within the United States...whether their presence here is lawful, unlawful, temporary, or permanent." Zadvydas v. Davis, 533 U.S. 678, 693 (2001).

49. "Procedural due process imposes constraints on governmental decisions which deprive individuals of 'liberty' or 'property' interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment." Mathews v. Eldridge, 424 U.S. 319, 332 (1976). "'The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" Id. at 333 (quoting Armstrong v. Manzo, 380 U.S. 545, 552 (1965)).

50. A noncitizen's "freedom from imprisonment is at the 'core of the liberty protected by the Due Process Clause.'" Hernandez v. Sessions, 872 F.3d 976, 993 (9th Cir. 2017) (quoting Foucha v. Louisiana, 504 U.S. 71, 80 (1992)).

51. The Ninth Circuit has applied the three-factor test outlined in Mathews v. Eldridge, 424 U.S. 319 (1976), when it analyzes the constitutional sufficiency of procedures to safeguard a noncitizen's liberty interest in remaining free from detention. Id. at 993; see also Rodriguez Diaz v. Garland, 53 F.4th 1189, 1206-07 (9th Cir. 2022) (same). Under the Mathews test, determining whether an administrative procedure provides the process constitutionally due generally requires consideration of three distinct factors: "First, the private interest that will be affected by the official action; second, 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; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." Hernandez v. Sessions, 872 F.3d 976, 993 (9th Cir. 2017) (citing Mathews, 424 U.S. at 335).

52. The Petitioner's interest in not being detained is "the most elemental of liberty interests[.]" Hamdi v. Rumsfeld, 542 U.S. 507, 529 (2004). "That Petitioner was arrested in public, detained and transferred to a facility in a different state, and remains in custody today undoubtedly deprives him of an established interest in his

liberty." E.A. T.-B. v. Wamsley, et al., 795 F. Supp 3d 1316, 1321 (W.D. Wash. Aug. 19, 2025).

53. The Constitution protects the Petitioner's interest in liberty by requiring due process if it is to be deprived. The United States Supreme Court has held elsewhere that "[f]reedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action." Foucha, 504 U.S. at 80 (1992); see also Zadvydas, 533 U.S. at 696 (finding that a non-citizen has a liberty interest "strong enough" to challenge "indefinite and potentially permanent" immigration detention).

54. Considering the second of the Mathews factors, here, the risk of erroneous deprivation of Petitioner's protected interest in his liberty is high. "That the Government may believe it had a valid reason to detain Petitioner does not eliminate its obligation to effectuate the detention in a manner that comports with due process." E.A. T.-B., 795 F. Supp 3d at 1322; see also Guillermo M.R. v. Kaiser, 791 F. Supp. 3d 1021, 1037-38 (N.D. Cal. July 17, 2025) (finding "undeniably stark" risk of erroneous deprivation where the Government contends that "notwithstanding a neutral arbiter's determination that Petitioner should be released, ICE is entitled to unilaterally terminate the immigration judge's order by re-detaining Petitioner without a hearing for at least six months, based on ICE's own determination in its sole discretion that additional conditions of release unilaterally set by ICE had been violated").

55. Under the final Mathews factor, the Government's interest in detaining Petitioner without assessing Petitioner's danger to the community or possibility of absconding is low. Any costs the government would have incurred in following proper procedures "are far outweighed by the risk of erroneous deprivation of the liberty interest at issue." E.A. T.-B., 795 F. Supp. 3d at 1324.

56. Based upon the Mathews factors, Petitioner has a protected liberty interest in his release from custody. Accordingly, the Due Process Clause requires that Petitioner receive a fair hearing before he can be detained.

Count 2: Violation of the Immigration and Nationality Act

57. The Petitioner realleges and incorporates by reference all preceding paragraphs as though fully set forth herein.

58. The Respondents are detaining Petitioner without the possibility of bond, based upon their position that 8 U.S.C. § 1225(b)(2)(A) mandates the detention of every noncitizen who entered the United States without inspection and admission or parole. That construction of the statute is contrary to the text, structure, history, and longstanding implementation of the INA.

59. The INA contains distinct detention authorities governing different stages and categories of immigration proceedings. As relevant here, 8 U.S.C. §§ 1225 and 1226 govern the detention of a noncitizen before the entry of a final administrative order of removal. "Section 1225 'authorizes the Government to detain certain aliens seeking admission into the country,' whereas section 1226 'authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings.'" Lepe v. Andrews, 801 F. Supp. 3d 1104, 1114 (E.D. Cal. 2025) (quoting Jennings v. Rodriguez, 583 U.S. 281, 287 (2018)).

60. Specifically, § 1226(a) states: "On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States...[T]he Attorney General...(1) may continue to detain the arrested alien; and (2) may release the alien on - (A) bond... ; or (B) conditional parole."

61. Following DHS' initial custody determination, a person detained under 8 U.S.C. § 1226(a) may seek review of that determination before an Immigration

Judge. See 8 C.F.R. §§ 1003.19(a), 1236.1(d)(1) (2026). The Supreme Court has accordingly described § 1226(a) as the "default rule" and explained that it authorizes the Government to detain noncitizens "already in the country pending the outcome of removal proceedings." Jennings, 583 U.S. at 288.

62. Section 1225(b)(2)(A) of the INA, by contrast, provides: "[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 of this title." 8 U.S.C. § 1225(b)(2)(A).

63. A person properly detained under 8 U.S.C. § 1225(b)(2)(A) is subject to mandatory detention in federal immigration custody for removal proceedings, and ordinarily may be released only through the limited parole authority conferred by 8 U.S.C. § 1182(d)(5)(A), rather than through a bond hearing before an Immigration Judge. See Jennings, 583 U.S. at 300; Lepe, 801 F. Supp. 3d at 1111.

64. The detention provisions of the INA at 8 U.S.C. §§ 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 - 3009-583, 3009-585 (1996).

65. When the Government implemented IIRIRA in 1997, to maintain the preexisting distinction between persons apprehended after entering the country and persons seeking entry at the border, EOIR drafted new regulations explaining that, "[d]espite being applicants for admission," noncitizens present without having been admitted or paroled (formerly described as persons who entered without inspection) were not considered detained under § 1225 and would instead remain eligible for bond and bond redetermination under § 1226(a). See Inspection and Expedited

Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

66. Consistent with that interpretation, for nearly three decades after IIRIRA's enactment, Immigration Judges have conducted section 1226(a) bond hearings for noncitizens who entered without inspection. See Matter of Yajure Hurtado, 29 I. & N. Dec. 216, 225 n.6 (BIA 2025) ("We acknowledge that for years Immigration Judges have conducted [§ 1226(a)] bond hearings for aliens who entered the United States without inspection."); Lepe, 801 F. Supp. 3d at 1117.

67. Yet, on July 8, 2025, DHS issued "Interim Guidance Regarding Detention Authority for Applicants for Admission," announcing that DHS had "revisited its legal position" and would thereafter treat section 1225, rather than section 1226, as the applicable detention authority for all persons statutorily classified as applicants for admission. United States Immigration & Customs Enforcement, Interim Guidance Regarding Detention Authority for Applicants for Admission, AILA Doc. No. 25071607, at 1-2 (July 8, 2025), available at American Immigration Lawyers Association, https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission (visited July 25, 2026). The policy applies regardless of when a person is apprehended and affects those who have resided in the United States for months, years, or even decades.

68. Subsequently, on September 5, 2025, the BIA adopted the same interpretation in Matter of Yajure Hurtado, 29 I. & N. Dec. 2016 (B.I.A. 2025), holding that a person present in the United States without admission is subject to mandatory detention under § 1225(b)(2)(A), and that an Immigration Judge lacks jurisdiction to hear that noncitizen's bond request.

69. While the Petitioner could be considered an "applicant for admission" because he is allegedly an "alien present in the United States who has not been

admitted," as defined at section 1225(a)(1), the government cannot show that, over 12 years after he entered the country, that the Petitioner is actively "seeking admission" to the United States. The Government's current "selective reading of the statute...ignores its 'seeking admission' language." Martinez v. Hyde, 792 F. Supp. 3d 211, 218 (D. Mass. 2025). "If, as the government argues, [section] 1225(b)(2)(A) was intended to apply to all 'applicant[s] for admission,' there would be no need to include the phrase 'seeking admission' in the statute." Lopez Benitez v. Francis, 795 F. Supp. 3d 475, 488 (S.D.N.Y. 2025). "That is, rather than stating that mandatory detention is required for any '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 statute would instead provide for mandatory detention for any 'applicant for admission, if the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted.'" Id. (quoting 8 U.S.C. § 1225(b)(2)(A)).

70. The rule against surplusage counsels that "'every clause and word of a statute' should have meaning." United States, ex rel. Polansky v. Exec. Health Res., Inc., 599 U.S. 419, 432 (2023) (quoting Montclair v. Ramsdell, 107 U.S. 147, 152 (1883)); League of California Cities v. Fed. Communications Comm'n, 118 F.4th 995, 1019 (9th Cir. 2024) ("The rule against surplusage generally prohibits [a court] from interpreting [a statute] in a way that 'mak[es] a part of it unnecessary[]'") (quoting NLRB v. Aakash, Inc., 58 F.4th 1099, 1105 (9th Cir. 2023)). The Government's position would make the "seeking admission" language meaningless and violate the rule against surplusage. Martinez, 792 F. Supp. 3d at 218; Lopez Benitez, 795 F. Supp. 3d at 488.

71. Moreover, statutory language must be read in context and with a view toward its place in the overall statutory scheme. Davis v. Michigan Dep't of Treasury, 489 U.S. 803, 809 (1989).

72. The Supreme Court has described section 1225 as operating "at the Nation's borders and ports of entry, where the Government must determine whether an alien seeking to enter the country is admissible." Jennings, 583 U.S. at 287. Section 1225 is titled "Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing," and its surrounding provisions repeatedly address arrival, inspection, applications to enter, stowaways, expedited removal, and withdrawal of an application followed by immediate departure. 8 U.S.C. § 1225(a)(2)-(5), (b)(1); Lepe, 801 F. Supp. 3d at 1114-15.

73. Section 1226, unlike section 1225, is organized around interior enforcement: arrest on a warrant, detention pending a removal decision, possible release on bond or conditional parole, custody following release from criminal confinement, and immigration detainers directed to state or local officials. See Lepe, 801 F. Supp. 3d at 1115 n.7.

74. Those statutory features correspond to the Petitioner's circumstances because he was apprehended long after entering the United States, and was placed into standard removal proceedings to determine whether he should be removed from the country under 8 U.S.C. § 1229a. See Pet'r App. at 27-29.

75. Furthermore, Courts presume that when Congress amends a statute, it intends the amendment to have real and substantial effect. The anti-surplusage canon of statutory construction has particular force when one interpretation would render another provision in the same statutory scheme unnecessary. See Stone v. INS, 514 U.S. 386, 397 (1995); Marx v. Gen. Revenue Corp., 568 U.S. 371, 386 (2013); Lepe, 801 F. Supp. 3d at 1116.

76. In 2025, Congress enacted the Laken Riley Act, amending section 1226(c) to add 8 U.S.C. § 1226(c)(1)(E), which mandates detention for any noncitizen (i) who is inadmissible under section 1182(a)(6)(A)(i) as an "alien present in the United States without being admitted or paroled," *and* (ii) who "is charged with, arrested for, convicted of, or admits" to committing certain crimes. 8 U.S.C. § 1226(c)(1)(E) (emphasis added); see Gomes v. Hyde, 804 F. Supp. 3d 265, 270 (D. Mass. 2025) (explaining statutory section).

77. If every "applicant for admission" - which is defined, as relevant here, as an "alien present in the United States who has not been admitted," 8 U.S.C. § 1225(a)(1), is already subject to mandatory detention under section 1225(b)(2)(A), as the Government contends, there would have been no need for the new section 1226(c)(1)(E), which mandates detention for every noncitizen who is "present in the United States without being admitted or paroled" and who has been "charged with, arrested for, or admits to" committing certain crimes. 8 U.S.C. § 1226(c)(1)(E). Reading section 1225 as the Government proposes would thus render section 1226(c)(1)(E) superfluous. See Gomes, 804 F. Supp. 3d at 275; Lopez Benitez, 795 F. Supp. 3d at 488-90; Romero v. Hyde, 795 F. Supp. 3d 271, 286 (D. Mass. 2025); Maldonado v. Olson, 795 F. Supp. 3d 1134, 1152 (D. Minn. 2025) ("The Court will not find that Congress passed the Laken Riley Act to 'perform the same work' that was already covered by § 1225(b)(2).").

78. On July 30, 2026, a panel of the United States Court of Appeals for the Ninth Circuit held that noncitizens, who are present in the United States without inspection and admission or parole, and who are apprehended in the interior of the United States, are not subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). See Rodriguez Vasquez v. Bostock, U.S.C.A. No. 25-6842, Slip.

Op. at 10 (9th Cir. July 30, 2026). The Court held that 8 U.S.C. § 1226, not 8 U.S..C. § 1225(b)(2)(A), governs those noncitizens' detention. See id.

79. Likewise, the Second, Sixth, Tenth, and Eleventh Circuits have rejected the Government's interpretation of the INA's detention statutes, and have concluded that section 1226(a), rather than section 1225(b)(2)(A), governs the detention materially similar noncitizens who entered the United States without inspection, and who were later apprehended inside the United States. See Santillan Quiroz v. Mullin, No. 26-6019, 2026 WL 1876709, at *17 (10th Cir. June 30, 2026); Hernandez Alvarez v. Warden, Fed. Det. Ctr. Miami, 175 F.4th 1258, 1285 (11th Cir. 2026); Lopez-Campos v. Raycraft, 175 F.4th 713, 735 (6th Cir. 2026); Barbosa da Cunha v. Freden, 175 F.4th 61, 96 (2d Cir. 2026).

80. Federal district judges within the United States District Court for the Southern District of California have likewise ordered section 1226(a) bond hearings for persons who entered the United States without inspection, who resided inside the United States, and who were later apprehended in the interior of the country. See e.g., Barry v. Casey, U.S.D.C. No. 26-cv-01408-BAS-DEB, __ F. Supp. 3d __, 2026 U.S. Dist. LEXIS 54352 (S.D. Cal. Mar. 16, 2026); Trujillo v. Noem, U.S.D.C. No. 26-cv-00268-BAS-VET, __ F. Supp. 3d __, 2026 WL 266496 (S.D. Cal. Feb. 2, 2026); Martinez Zayas v. Gordon, U.S.D.C. No. 26-CV-00237-BAS-DEB, __ F. Supp. 3d __, 2026 WL 266275, at *4 (S.D. Cal. Jan. 30, 2026); Gregorio v. Larose, U.S.D.C. No. 25-CV-03322-BAS-BJW, __ F. Supp. 3d __, 2025 WL 3653998, at *4 (S.D. Cal. Dec. 17, 2025).

81. Here, the Petitioner entered the United States long before his present apprehension, resided inside the country, was arrested by ICE-ERO in the interior of the country, and was placed in standard removal proceedings by DHS under 8 U.S.C. § 1229a.

82. The Petitioner was not apprehended while he arrived at a Port of Entry into the United States, or while he was otherwise engaged in "seeking admission" to the country.

83. The Petitioner is not subject to expedited-removal detention under 8 U.S.C. § 1225(b)(1), mandatory criminal detention under 8 U.S.C. § 1226(c), or post-final-order detention under 8 U.S.C. § 1231.

84. The Petitioner's detention is therefore governed by section 1226(a), and he is entitled to seek an individualized custody redetermination before an Immigration Judge. See 8 U.S.C. § 1226(a); 8 C.F.R. §§ 1003.19(a), 1236.1(d)(1).

85. By categorically denying the Petitioner access to a bond hearing and continuing to detain him under 8 U.S.C. § 1225(b)(2)(A), the Respondents are holding Petitioner in their custody, in violation of the INA and the laws of the United States.

VIII.

REQUEST FOR RELIEF

The Petitioner respectfully request this Honorable Court to:

1. Accept jurisdiction of the matter;
2. Order that the Petitioner shall not be transferred outside the Southern District of California while this habeas petition is pending;
3. Issue an Order, directing the Respondents to show cause why this Petition should not be granted within three days;
4. Issue an Order, requiring that the Respondents release the Petitioner or, in the alternative, provide the Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) within seven days;
5. Declare that the Petitioner's detention is unlawful; and
6. Grant any other and further relief that this Court deems just and proper.

Dated: July 30, 2026

Respectfully submitted,

/s/ Lori B. Schoenberg
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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I am submitting this verification on behalf of the Petitioner, because I am the Petitioner's attorney. I have discussed with the Petitioner the events described in this Petition. On the basis of those discussions, on information and belief, I hereby verify that the factual statements made in the attached verified Petition for Writ of Habeas Corpus, Pursuant to 28 U.S.C. § 2241, and Request to Show Cause are true and correct to the best of my knowledge. Dated this 30th day of July, 2026.

/s/ Diego Monserratte
DIEGO MONSERRATTE