UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Juan Rogelio Tol Alva,

Petitioner,

v.

DAVID VENTURELLA, ACTING DIRECTOR OF U.S. ICE, FIELD OFFICE DIRECTOR, San Diego Field Office, Immigration and Customs Enforcement; Markwayne MULLIN, Secretary, U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; Todd BLANCHE, Acting U.S. Attorney General; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; Otay Mesa Detention Center in San Diego, CA; Warden of Otay Mesa Detention Center in San Diego, CA,

Respondents.

Case No. '26CV4408 RBM GC

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner Juan Rogelio Tol Alva (A# [redacted]) is in the physical custody of ICE at the Otay Mesa Detention Center in San Diego, California. He now faces unlawful detention because the Department of Homeland Security (DHS) and the Executive Office of Immigration Review (EOIR) have concluded Petitioner is subject to mandatory detention.

2. Petitioner is charged with, inter alia, being inadmissible as an immigrant not in possession of a valid, unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document at the time of his application for admission. *See* 8 U.S.C. § 1182(a)(7)(A)(i)(I). That charge arises from the expiration of the parole under which Petitioner was originally inspected and admitted to the United States.

3. Because Petitioner's parole has lapsed, DHS has concluded that, pursuant to 8 U.S.C. § 1182(d)(5)(A), Petitioner "shall be dealt with in the same manner as any other applicant for admission," and on that basis has treated him as ineligible for release, consistent with a new DHS policy issued on July 8, 2025, instructing all Immigration and Customs Enforcement (ICE) employees to consider such persons subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.

4. Similarly, on September 5, 2025, the Board of Immigration Appeals (BIA or Board) issued a precedent decision, binding on all immigration judges, holding that an immigration judge has no authority to consider bond requests for any person who entered the United States without admission. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The Board determined that such individuals are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.

5. Petitioner's detention on this basis violates the plain language of the Immigration and Nationality Act. Section 1225(b)(2)(A)'s mandatory detention scheme is directed at noncitizens who are, in fact, seeking admission to the United States at the time of their encounter with immigration officials. It does not apply to individuals like Petitioner, who was inspected and paroled into the United States nearly three years ago, has resided continuously in this country ever since, and was arrested in the interior of the United States, far from any port of entry. Petitioner is instead subject to a different statute, § 1226(a), that allows for release on conditional parole or bond.

6. Respondents' new legal interpretation is plainly contrary to the statutory framework and contrary to decades of agency practice applying § 1226(a) to people like Petitioner.

7. Unlike the noncitizens whose detention *Matter of Yajure Hurtado* addressed, Petitioner did not enter the United States without inspection, admission, or parole. He was affirmatively inspected and paroled by a Customs and Border Protection (CBP) officer at the Hidalgo, Texas port of entry after scheduling his arrival through the CBP One mobile application. Multiple courts, including a court within this District, have held that noncitizens who entered the United States through this precise process are not subject to mandatory detention under § 1225(b)(2)(A) merely because their parole has since expired or been terminated, and remain eligible for a bond hearing under § 1226(a). *See, e.g.*, *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Linarez v. Stamper*, No. 1:26-cv-00101-JAW (D. Me. Mar. 3, 2026); *Iurii D. v. Andrews*, No. 1:26-cv-00758-TLN-CKD (E.D. Cal. Feb. 19, 2026); *Lebedev v. Warden of the Golden State Annex Det. Facility*, No. 1:25-cv-01391-KES-SAB-HC (E.D. Cal. Feb. 20, 2026); *Hyppolite v. Noem*, No. 25-CV-4304 (NRM) (E.D.N.Y. Oct. 6, 2025); *Millan v. Voorhies*, No. 4:25-cv-02779 (N.D. Ohio Jan. 30, 2026).

8. Petitioner is a thirty-four-year-old native and citizen of Guatemala, born in Chichicastenango. He, his wife, Marta Elena Panto Cutillo de Tol, and two of his minor daughters, K.L.T.P. and B.Z.T.P. (identified herein by initials pursuant to Fed. R. Civ. P. 5.2(a)(3)), scheduled their appointment through the CBP One application and were inspected and paroled into the United States at the Hidalgo, Texas port of entry on August 26, 2023, with authorized parole through April 18, 2025.

9. Petitioner and his family settled in Hardee County, Florida, where Petitioner supported his family through agricultural and field-maintenance work. On September 29, 2025, Petitioner timely filed a Form I-589 application for asylum, withholding of removal, and protection under the Convention Against Torture, based on [redacted] (See Exhibit A.) That application remains pending; it was accepted by the Orlando, Florida immigration court, with an individual merits hearing currently scheduled for May 2, 2028.

10. Petitioner has no criminal history involving violence, dishonesty, or any offense described in 8 U.S.C. § 1226(c). His only contact with the criminal justice system consists of two minor Florida traffic citations for driving without a valid license, the second of which resulted in a sentence of time served. (See Exhibit B, Hardee County Court Records.)

11. On or about May 3, 2026, Petitioner was taken into custody in Hardee County, Florida in connection with the traffic matter described above. Following his sentencing on June 3, 2026, Petitioner was released from state custody on June 4, 2026 directly into immigration custody, and has since been transferred across the country to the Otay Mesa Detention Center in San Diego,

California; his removal proceedings have likewise been redocketed to an immigration court in California.

12. Petitioner's wife and two daughters, who are also respondents in the family's pending removal and asylum proceedings, remain non-detained in Wauchula, Florida.

13. Petitioner has not previously sought parole or bond from ICE.

14. Petitioner does not pose a danger to the community or a flight risk. He has no criminal history of any kind and has demonstrated respect for the law. Given his nearly three years of continuous residence in the United States since his lawful parole in August 2023, and his pending asylum claim, he has every incentive to comply with all court requirements and appear for future proceedings.

15. Petitioner has been unable to obtain any individualized review of his custody. Pursuant to the Board's decision in Matter of Yajure Hurtado, the immigration court lacks jurisdiction to consider a custody redetermination request for individuals, like Petitioner, deemed applicants for admission. Petitioner has thus been denied any avenue of administrative review, and no further administrative remedy exists.

16. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be released unless Respondents provide him an individualized bond hearing on the merits forthwith, and in no event later than seven days from the date of this Petition.

JURISDICTION

17. Petitioner is in the physical custody of Defendants. Petitioner is detained at the Otay Mesa Detention Center, San Diego, California.

18. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

19. This Court may grant relief pursuant to 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.

VENUE

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

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

JURISDICTION IS NOT DEFEATED BY A POST-FILING TRANSFER

22. Jurisdiction and venue, once properly established in this District, are not defeated by a subsequent transfer of Petitioner to another district. In *Ex parte Endo*, 323 U.S. 283, 304–307 (1944), the Supreme Court held that a district court's habeas jurisdiction, once acquired, is not lost by the Government's later removal of the petitioner to another district, and that the court retains power to direct the writ to a respondent within its jurisdiction. The Court reaffirmed this rule in *Rumsfeld v. Padilla*, 542 U.S. 426, 441 (2004), explaining that "*Endo* stands for the important but limited proposition that when the Government moves a habeas petitioner after she properly files a petition naming her immediate custodian, the District Court retains jurisdiction and may direct the writ to any respondent within its jurisdiction who has legal authority to effectuate the prisoner's

release." Respondents are therefore on notice that any transfer of Petitioner outside this District after the filing of this Petition will not divest this Court of jurisdiction. This concern is not academic: Petitioner's custody and removal proceedings have already been transferred once, from Florida to California, since his detention began.

23. This rule is distinct from the venue provisions governing bond proceedings before an Immigration Judge. Under 8 C.F.R. § 1003.19(c)(1), venue for a bond redetermination request before the immigration court follows the respondent's place of detention, and the Board of Immigration Appeals recently confirmed that this administrative venue shifts with a respondent's physical transfer, regardless of where removal proceedings were initially pending. Matter of Vizcaino Aybar, 29 I&N Dec. 736, 737–38 (BIA 2026). That regulatory venue rule has no application to this Court's Article III habeas jurisdiction under 28 U.S.C. § 2241, which — unlike administrative bond venue — vests at the time of filing and is unaffected by Respondents' subsequent custodial decisions. See Padilla, 542 U.S. at 441; Endo, 323 U.S. at 304–307. If anything, Vizcaino Aybar illustrates the very harm a transfer would inflict here: because administrative bond venue follows the detainee's location, a transfer of Petitioner outside this District could simultaneously strip any receiving immigration court of a settled basis to review his custody, while Respondents separately contend the transfer defeats this Court's jurisdiction — leaving Petitioner without a meaningful forum in either system. To prevent that result, and because Respondents in Vizcaino Aybar transferred the respondent before filing a motion to change venue, Petitioner respectfully requests that, should Respondents seek to transfer Petitioner outside this District while this Petition remains pending, they first be required to file a motion for change of venue with this Court and obtain a ruling before effectuating any such transfer.

REQUIREMENTS OF 28 U.S.C. § 2243

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

25. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

PARTIES

26. Petitioner Juan Rogelio Tol Alva is a native and citizen of Guatemala who has been in immigration detention since June 4, 2026, when he was released from Hardee County, Florida custody directly into ICE custody. ICE has declined to set bond, and Petitioner is unable to obtain review of his custody before an Immigration Judge pursuant to the Board's decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

27. Respondent David Venturella is the Acting Director of U.S. Immigration and Customs Enforcement and is sued in his official capacity. Respondent Venturella is responsible for Petitioner's detention.

28. Respondent Field Office Director, San Diego Field Office, is the Director of the San Diego Field Office of ICE's Enforcement and Removal Operations division. As such, the San

Diego Field Office Director is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He or she is sued in his or her official capacity.

29. Respondent Markwayne Mullin is the Secretary of the Department of Homeland Security. He is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Mr. Mullin has ultimate custodial authority over Petitioner and is sued in his official capacity.

30. Respondent Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.

31. Respondent Todd Blanche is the Acting Attorney General of the United States. He is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. He is sued in his official capacity.

32. Respondent Executive Office for Immigration Review (EOIR) is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings.

33. The unnamed Respondent, the Warden of the Otay Mesa Detention Center, where Petitioner is detained, has immediate physical custody of Petitioner. He or she is sued in his or her official capacity.

LEGAL FRAMEWORK

34. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The "Great Writ" has been referred to by

United States Courts as "perhaps the most important writ known to the constitutional law of England, affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement." Fay v. Noia, 372 U.S. 391, 400 (1963) (emphasis added). A petitioner may seek a writ of habeas corpus when their custody violates the US Constitution or a federal law. 28 U.S.C. § 2241(c)(3). The writ should be granted if petitioner can show that their detention is unlawful by a preponderance of evidence. Aguilar v. Bondi, No. 5:25-CV-01453-JKP, 2025 WL 3471417, at *2 (W.D. Tex. Nov. 26, 2025) (citing Bruce v. Estelle, 536 F.2d 1051, 1058 (5th Cir. 1976)).

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

36. Detained immigrants petitioning under 28 U.S.C. § 2241 face no statutory exhaustion requirements. Scott v. Stephens, No. 1:21-CV-620, 2023 WL 5945600, at *3 (E.D. Tex. Aug. 23, 2023), report and recommendation adopted, No. 1:21-CV-620, 2023 WL 5943127 (E.D. Tex. Sept. 11, 2023).

37. Nor is a judicially imposed prudential exhaustion requirement appropriate where, as here: time is of the essence, facts are largely undisputed, and the parties' disagreement is based on a legal conclusion. Fernandez v. Dickey, No. CV 4:25-6088, 2026 WL 74184, at *1 (S.D. Tex. Jan. 9, 2026).

38. In Petgrave v. Aleman, 529 F. Supp. 3d 665, 672 n.14 (S.D. Tex. 2021), the court held that exhaustion is not required where an appeal timeline would exacerbate petitioner's alleged injury of prolonged detention. See also Lopez-Arevelo .v Ripa, 801 F. Supp. 3d 688, 680 (W.D. Tex. 2025).

39. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.

40. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

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

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

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

44. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104-–208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

45. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

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

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

48. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission,"[1] claims that persons deemed applicants for admission — including, per Respondents' position, noncitizens whose parole has expired or been terminated, see 8 U.S.C. § 1182(d)(5)(A) — shall now be subject to the mandatory detention provision at § 1225(b)(2)(A), regardless of how long they have resided in the United States.

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

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

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

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

52. On July 30, 2026, the Ninth Circuit Court of Appeals affirmed the district court's judgment in Rodriguez Vazquez, holding that aliens present without admission who are apprehended in the interior of the United States are subject to detention under 8 U.S.C. § 1226(a), not § 1225(b)(2)(A). Rodriguez Vazquez v. Bostock, No. 25-6842, slip op. at 10 (9th Cir. July 30, 2026). The court rejected the government's position that any noncitizen deemed an "applicant for admission" under § 1225(a)(1) is thereby "seeking admission" for purposes of § 1225(b)(2)(A), explaining that the two phrases are not interchangeable and that Congress would not have effected so significant a change to the government's detention authority through such indirect statutory language. Id. at 45–48. The Ninth Circuit's decision is now binding on this Court.

53. Subsequently, court after court has adopted the same reading of the INA's detention authorities and rejected ICE and EOIR's new interpretation. *See, e.g.*, *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and*

recommendation adopted, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d ----, 2025 WL 2466670 (D. Minn. Aug. 27, 2025) *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *see also, e.g.*, *Palma Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at *2 (D. Neb. Sept. 3, 2025) (noting that "[t]he Court tends to agree" that § 1226(a) and not § 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 at *3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-RCC, 2025 WL 2374224 at *2 (D. Neb. Aug. 14, 2025) (same).

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

55. Section 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." These removal hearings are held under § 1229a, to "decid[e] the inadmissibility or deportability of a[] [noncitizen]."

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

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

58. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. The statute's entire framework is premised on inspections at the border of people who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

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

60. Petitioner was inspected and paroled under the CBP One application and was already living, working, and raising his family in the United States when he was later taken into custody in Hardee County, Florida — nearly three years after his parole began, and far from any port of entry. Multiple courts have found that individuals who entered via CBP One, and who are later encountered in the interior after their parole expires or is terminated, are not subject to § 1225(b)(2)(A) and are eligible for habeas relief in the form of release from detention or a bond hearing: *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM (S.D. Cal. Sept. 3, 2025); *Linarez v. Stamper*, No. 1:26-cv-00101-JAW (D. Me. Mar. 3, 2026); *Iurii D. v. Andrews*, No. 1:26-cv-00758-TLN-CKD (E.D. Cal. Feb. 19, 2026); *Hyppolite v. Noem*, No. 25-CV-4304 (NRM) (E.D.N.Y. Oct. 6, 2025); *Lebedev v. Warden of the Golden State Annex Det. Facility*, No. 1:25-cv-01391-KES-SAB-HC (E.D. Cal. Feb. 20, 2026); *Millan v. Voorhies*, No. 4:25-cv-02779 (N.D. Ohio Jan. 30, 2026).

61. Petitioner's circumstances also reflect a pattern documented in related litigation over DHS's handling of CBP One parolees. In *Sileiri Doe v. DHS*, No. 25-cv-12245-ADB (D. Mass. Mar. 31, 2026), the court certified a class of noncitizens who scheduled entry through CBP One, were paroled into the United States between May 16, 2023 and January 19, 2025, and had their parole terminated in April 2025 pursuant to a form notice, without any individualized review of whether the purposes of parole had been served, and held that such categorical terminations violated the Administrative Procedure Act. Petitioner's own parole term — authorized through April 18, 2025, notably short of the standard two-year period typically granted to CBP One entrants

who arrived in August 2023 — is consistent with the same practice DHS was found to have unlawfully applied to similarly situated noncitizens in that litigation. Regardless of the precise mechanism by which Petitioner's parole ended, Respondents may not treat that termination as automatically converting Petitioner into a mandatorily-detained "applicant for admission" under § 1225(b)(2)(A) once he has been apprehended in the interior of the country, long after his initial, lawful inspection and admission.

FACTS

62. Petitioner has resided in the United States since August 26, 2023, when he, his wife, and two of his daughters were inspected and paroled into the country at the Hidalgo, Texas port of entry after scheduling their arrival through the CBP One application. His most recent address was [redacted]

63. On September 29, 2025, Petitioner filed a Form I-589 application for asylum, withholding of removal, and protection under the Convention Against Torture with the Orlando, Florida immigration court, based on [redacted] That application remains pending, with an individual merits hearing scheduled for May 2, 2028.

64. Petitioner's only contact with the criminal justice system in the United States consists of two Florida traffic matters for driving without a valid license: a 2025 citation resulting in adjudication withheld, and a second citation, filed May 4, 2026, resulting in a June 3, 2026 conviction and a sentence of time served (one month and two days). (See Exhibit B.) Petitioner has never been charged with or convicted of any crime involving violence, dishonesty, or moral turpitude, and has no criminal history that would render him subject to mandatory detention under 8 U.S.C. § 1226(c).

65. On or about May 3, 2026, Petitioner was taken into custody in Hardee County, Florida in connection with the traffic matter described above. Following his June 3, 2026 sentencing, Petitioner was released from state custody on June 4, 2026 directly into the custody of immigration authorities. Petitioner has since been transferred to the Otay Mesa Detention Center in San Diego, California, and his removal proceedings have likewise been redocketed to an immigration court in California.

66. DHS has charged Petitioner as inadmissible under 8 U.S.C. § 1182(a)(7)(A)(i)(I), based on the lapse of the parole under which he was originally inspected and admitted, and — notwithstanding his lawful inspection and nearly three years of continuous residence in the United States — is treating him as an "applicant for admission" subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A), consistent with the policy and Matter of Yajure Hurtado described above.

67. Petitioner's wife, Marta Elena Panto Cutillo de Tol, and two of his daughters, K.L.T.P. and B.Z.T.P., remain non-detained in Wauchula, Florida, and are co-respondents with Petitioner in the family's pending removal and asylum proceedings.

68. Petitioner has not previously submitted a request for parole or bond to ICE.

69. Petitioner has no criminal history rendering him ineligible for release under 8 U.S.C. §§ 1226(c), 1225(b)(1), or 1231. As a result, Petitioner remains in detention, thousands of miles from his wife and children, without any avenue for an individualized custody determination. Without relief from this Court, he faces the prospect of months, or even years, in immigration custody, separated from his family and unable to participate meaningfully in his pending asylum case.

CLAIMS FOR RELIEF

COUNT I
Violation of the INA

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

71. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to noncitizens residing in the United States who are subject to the grounds of inadmissibility at issue here. As relevant here, it does not apply to those who were previously inspected and paroled into the country and have been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents, regardless of whether their parole has since expired or been terminated. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

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

COUNT II
Violation of the Bond Regulations

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

74. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of "Apprehension, Custody, and Detention of [Noncitizens]," the agencies explained that noncitizens present without a current, valid admission would be eligible for bond and bond redetermination. 62 Fed. Reg. at 10323. The agencies thus made clear that individuals present in the interior of the country were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.

75. Nonetheless, pursuant to *Matter of Yajure Hurtado* and Respondents' related policy, EOIR has a policy and practice of applying § 1225(b)(2) to individuals like Petitioner whose parole has lapsed.

76. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

COUNT III
Violation of Due Process

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

78. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

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

> ""As to the private interest affected, the Supreme Court has observed that freedom from physical detention is "the most elemental of liberty interests." Hamdi v Rumsfeld, 542 U.S. 507, 529 (2004). And so, other courts considering challenge of §1003.19(i)(2) as applied in similar circumstances have considered whether the detainee is held in conditions that are indistinguishable from criminal incarceration. Martinez, 2025 WL 2598379 at *2, citing Gunyadin v Trump, 784 F.Supp.3d 1175, 1187 (D Minn 2025). This is because the private interest when asserted in such context is without question significant."
>
> -Arcos v. Noem, Civil Action 4:25-cv-04599 (S.D. Tex. Oct 08, 2025)

Petitioner has a cognizable protectable liberty interest in his freedom from detention. Lopez-Arevelo v. Ripa, 801 F. Supp. 3d 668, 686 (W.D. Tex. 2025) (holding noncitizens in mandatory detention without a bond hearing constitutes a due process violation); Diaz v. Kaiser, No. 25-cv-5071, 2025

WL 1676854, at *2 (N.D. Cal. June 14, 2025) (collecting cases); accord M.S.L., 2025 WL 2430267, at *8 ("Just as people on preparole, parole, and probation status have a liberty interest, so too does [a noncitizen released from immigration detention] have a liberty interest in remaining out of custody on bond.") (quoting Ortega v. Bonnar, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019)); Rosado v. Figueroa, No. 25-cv-2157, 2025 WL 2337099, at *12 (D. Ariz. Aug. 11, 2025) (same).

80. Federal courts use the three-part test in Mathews v. Eldridge to determine whether civil detention violates a detainee's due process rights. 424 U.S. 319 (1976). The elements of this test are: (1) the private interest that the official action affects; (2) the risk that the procedures used will result in an erroneous deprivation of the private interest, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the Government's interest in following the existing procedures, both in achieving their objectives and in the potential burdens of an alternate procedure. Id. at 335.

81. Here, all three factors favor the petitioner.

82. First, Petitioner has a significant private interest at stake. A person's interest in freedom from physical detention is "the most elemental of liberty interests." Hamdi v. Rumsfeld, 542 U.S. 507, 529, 124 S.Ct. 2633, 159 L.Ed.2d 578 (2004); see also Zadvydas, 533 U.S. at 690, 121 S.Ct. 2491 ("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."). Petitioner currently experiences the gambit of deprivations that come with physical detention.

83. Second, Petitioner will continue to be deprived of this interest if the current procedure (detaining Petitioner without a hearing) is followed. Petitioner has a strong likelihood of meeting the criteria for being released on bond. 8 CFR §§236.1(c)(8), 1236.1(c)(8) (2020); In re Adeniji, 22 I. & N. Dec. 1102, 1113 (BIA 1999). Even if Petitioner is not subsequently released, Petitioner still has a legal and constitutional interest in the hearing itself, in being heard.

84. Lastly, the Government has no legitimate interest in refusing to follow its own rules. Petitioner poses no safety threats to the community. Releasing Petitioner, or holding a hearing to release Petitioner on bond, would in fact save the government the resources and expense of continuing to imprison Petitioner.

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

PRAYER FOR RELIEF

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

a. Assume jurisdiction over this matter;

b. Declare that Petitioner's arrest and detention violates the Due Process Clause of the Fifth Amendment, the INA, and implementing regulations;

c. Issue an Emergency Temporary Restraining Order that Petitioner shall not be transferred outside the SOUTHERN DISTRICT OF CALIFORNIA while this habeas petition is pending, unless and until Respondents first file a motion for change of venue with this Court and this Court rules on that motion;

d. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days, and set a hearing on this Petition within five days of the return, as required by 28 USC § 2243;

e. Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner or, in the alternative, provide a bond hearing under 8 U.S.C. § 1226(a) within seven days, at which hearing Respondents will bear the burden of justifying Petitioner's continued detention by clear and convincing evidence of dangerousness or flight risk;

f. Declare that Petitioner's detention is unlawful;

g. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and

h. Grant any other and further relief that this Court deems just and proper.

DATED this 31th day of July, 2026

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

I am submitting this verification on behalf of Petitioner because his current detention makes him unable to submit one on his own behalf. On information and belief, I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

CERTIFICATE OF SERVICE

Under penalties as provided by law, the undersigned certifies and states that true and correct copies of this Petition for Writ of Habeas Corpus will be served upon all counsel of record via the online CM/ECF system.

/s/ Cynthia Bautista
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