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6 UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

8 TOMAS CANA ATZ,

9 Petitioner,

10 v.

11 KRISTI NOEM, Secretary, U.S. Department of  
Homeland Security; U.S. DEPARTMENT OF  
12 HOMELAND SECURITY; PAMELA BONDI,  
U.S. Attorney General; EXECUTIVE OFFICE  
13 FOR IMMIGRATION REVIEW; TODD M.  
LYONS, Acting Director of Immigration and  
14 Customs Enforcement, Newark Field Office,  
Immigration and Customs Enforcement; LUIS  
15 SOTO, Director, Delaney Hall Detention  
Facility,

16 Respondents.

Case No. 2:25-cv-16240

**PETITION FOR WRIT OF  
HABEAS CORPUS**

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1 **INTRODUCTION**

2 1. Petitioner Tomas Cana Atz is in the physical custody of Respondents at the  
3 Delaney Hall Detention Facility. He now faces unlawful detention because the Department of  
4 Homeland Security (DHS) and the Executive Office of Immigration Review (EOIR) have  
5 concluded Petitioner is subject to mandatory detention.

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

8 3. Based on this allegation in Petitioner’s removal proceedings, DHS denied  
9 Petitioner release from immigration custody, consistent with a new DHS policy issued on July 8,  
10 2025, instructing all Immigration and Customs Enforcement (ICE) employees to consider anyone  
11 inadmissible under § 1182(a)(6)(A)(i)—i.e., those who entered the United States without  
12 admission or inspection—to be subject to detention under 8 U.S.C. § 1225(b)(2)(A) and  
13 therefore ineligible to be released on bond.

14 4. Similarly, on September 5, 2025, the Board of Immigration Appeals (BIA or  
15 Board) issued a precedent decision, binding on all immigration judges, holding that an  
16 immigration judge has no authority to consider bond requests for any person who entered the  
17 United States without admission. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).  
18 The Board determined that such individuals are subject to detention under 8 U.S.C. §  
19 1225(b)(2)(A) and therefore ineligible to be released on bond.

20 5. Petitioner’s detention on this basis violates the plain language of the Immigration  
21 and Nationality Act. Section 1225(b)(2)(A) does not apply to individuals like Petitioner who  
22 previously entered and are now residing in the United States. Instead, such individuals are  
23 subject to a different statute, § 1226(a), that allows for release on conditional parole or bond.  
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1 That statute expressly applies to people who, like Petitioner, are charged as inadmissible for  
2 having entered the United States without inspection.

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

6 7. Accordingly, Petitioner seeks a writ of habeas corpus requiring that He be  
7 released unless Respondents provide a bond hearing under § 1226(a) within seven days.

### 8 JURISDICTION

9 8. Petitioner is in the physical custody of Respondents. Petitioner is detained at the  
10 Delaney Hall Detention Facility in Newark, New Jersey.

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

14 10. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory  
15 Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

### 16 VENUE

17 11. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-  
18 500 (1973), venue lies in the United States District Court for the District of New Jersey, the  
19 judicial district in which Petitioner currently is detained.

20 12. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because  
21 Respondents are employees, officers, and agencies of the United States, and because a  
22 substantial part of the events or omissions giving rise to the claims occurred in the District of  
23 New Jersey.



1 Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Ms.  
2 Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

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

6 19. Respondent Pamela Bondi is the Attorney General of the United States. She is  
7 responsible for the Department of Justice, of which the Executive Office for Immigration Review  
8 and the immigration court system it operates is a component agency. She is sued in her official  
9 capacity.

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

13 21. Respondent Luis Soto is employed by GeoGroup, Inc. as Director of the Delaney  
14 Hall Detention Facility, where Petitioner is detained. He has immediate physical custody of  
15 Petitioner. He is sued in his official capacity.

## 16 LEGAL FRAMEWORK

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

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

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

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

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

7           27.     The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the  
8 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No.  
9 104–208, Div. C, §§ 302–03, 110 Stat. 3009–546, 3009–582 to 3009–583, 3009–585. Section  
10 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119-1,  
11 139 Stat. 3 (2025).

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

17           29.     Thus, in the decades that followed, most people who entered without inspection  
18 and were placed in standard removal proceedings received bond hearings, unless their criminal  
19 history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). That practice was consistent  
20 with many more decades of prior practice, in which noncitizens who were not deemed “arriving”  
21 were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a)  
22 (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply  
23 “restates” the detention authority previously found at § 1252(a)).  
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1           30.     On July 8, 2025, ICE, “in coordination with” DOJ, announced a new policy that  
2 rejected well-established understanding of the statutory framework and reversed decades of  
3 practice.

4           31.     The new policy, entitled “Interim Guidance Regarding Detention Authority for  
5 Applicants for Admission,”<sup>1</sup> claims that all persons who entered the United States without  
6 inspection shall now be subject to mandatory detention provision under § 1225(b)(2)(A). The  
7 policy applies regardless of when a person is apprehended, and affects those who have resided in  
8 the United States for months, years, and even decades.

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

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

16           34.     Even before ICE or the BIA introduced these nationwide policies, IJs in the  
17 Tacoma, Washington, immigration court stopped providing bond hearings for persons who  
18 entered the United States without inspection and who have since resided here. There, the U.S.  
19 District Court in the Western District of Washington found that such a reading of the INA is  
20 likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not  
21 apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d  
22 1239 (W.D. Wash. 2025).

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24 <sup>1</sup> Available at <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>.

1           35.     Subsequently, court after court has adopted the same reading of the INA’s  
2 detention authorities and rejected ICE and EOIR’s new interpretation. *See, e.g., Gomes v. Hyde*,  
3 No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*,  
4 No. CV 25-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025);  
5 *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11,  
6 2025), *report and recommendation adopted*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL  
7 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025  
8 WL 2371588, at \*1 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-  
9 SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-  
10 01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-  
11 11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Leal-Hernandez v. Noem*, No. 1:25-  
12 cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-  
13 01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-  
14 CV-3051 (ECT/DJF), --- F. Supp. 3d ----, 2025 WL 2466670, at \*8 (D. Minn. Aug. 27, 2025)  
15 *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug.  
16 29, 2025); *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal.  
17 Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL  
18 2591530 (C.D. Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL  
19 2609425 (E.D. Mich. Sept. 9, 2025); *see also, e.g., Palma Perez v. Berg*, No. 8:25CV494, 2025  
20 WL 2531566 at \*2 (D. Neb. Sept. 3, 2025) (noting that “[t]he Court tends to agree” that §  
21 1226(a) and not § 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-  
22 RCC, 2025 WL 2402271 at \*3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25-  
23 cv-03158-JFB-RCC, 2025 WL 2374224 at \*2 (D. Neb. Aug. 14, 2025) (same).

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

4           37. Section 1226(a) applies by default to all persons “pending a decision on whether  
5 the [noncitizen] is to be removed from the United States.” These removal hearings are held under  
6 § 1229a, to “decid[e] the inadmissibility or deportability of a[] [noncitizen].”

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

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

18           40. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who  
19 recently entered the United States. The statute’s entire framework is premised on inspections at  
20 the border of people who are “seeking admission” to the United States. 8 U.S.C.  
21 § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme  
22 applies “at the Nation’s borders and ports of entry, where the Government must determine  
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1 whether a[] [noncitizen] seeking to enter the country is admissible.” *Jennings v. Rodriguez*, 583  
2 U.S. 281, 287 (2018).

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

6 **FACTS**

7 42. Petitioner has resided in the United States since April 22, 2009 and lives in  
8 Cliffside Park, New Jersey. He previously residing in the United States from March 8, 2001 until  
9 December 1, 2007 in Cliffside Park, New Jersey.

10 43. On September 1, 2025, Petitioner was arrested on a routine vehicle stop at 254  
11 Main Stret, Cliffside Park, New Jersey. Petitioner is now detained at the Delaney Hall Delaney  
12 Hall Detention Facility.

13 44. DHS placed Petitioner in removal proceedings before the Elizabeth  
14 Immigration Court pursuant to 8 U.S.C. § 1229a. ICE has charged Petitioner with, *inter alia*,  
15 being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as someone who entered the United States  
16 without inspection.

17 45. Petitioner has a young United States Citizen child who is currently receiving  
18 therapy for his developmental delays.

19 46. Petitioner has no criminal history.

20 47. Petitioner has worked construction in the United States and paid taxes since at  
21 least 2018.

22 48. Petitioner is a valued member of his community and received several letters of  
23 support for his release.

1 49. Petitioner is neither a flight risk nor a danger to the community.

2 50. Following Petitioner's arrest and transfer to Delaney Hall Detention  
3 Facility, ICE issued a custody determination to continue Petitioner's detention without an  
4 opportunity to post bond or be released on other conditions.

5 51. Petitioner subsequently requested a bond redetermination hearing before an  
6 immigration judge.

7 52. Pursuant to *Matter of Yajure Hurtado*, the immigration judge found on October 1,  
8 2025, that he was unable to consider Petitioner's bond request.

9 53. As a result, Petitioner remains in detention. Without relief from this court, He face  
10 the prospect of months, or even years, in immigration custody, separated from their family and  
11 community.

12 **CLAIMS FOR RELIEF**

13 **COUNT I**

14 **Violation of the INA**

15 54. Petitioner incorporates by reference the allegations of fact set forth in the  
16 preceding paragraphs.

17 55. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all  
18 noncitizens residing in the United States who are subject to the grounds of inadmissibility. As  
19 relevant here, it does not apply to those who previously entered the country and have been  
20 residing in the United States prior to being apprehended and placed in removal proceedings by  
21 Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to  
22 § 1225(b)(1), § 1226(c), or § 1231.

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

3 **COUNT II**

4 **Violation of Due Process**

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

7 58. The government may not deprive a person of life, liberty, or property without due  
8 process of law. U.S. Const. amend. V. “Freedom from imprisonment—from government  
9 custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the  
10 Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S.Ct. 2491, 150 L.Ed.2d 653  
11 (2001).

12 59. Petitioner has a fundamental interest in liberty and being free from official  
13 restraint.

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

16 **PRAYER FOR RELIEF**

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

- 18 a. Assume jurisdiction over this matter;
- 19 b. Order that Petitioner shall not be transferred outside the District of New Jersey  
20 while this habeas petition is pending;
- 21 c. Issue an Order to Show Cause ordering Respondents to show cause why this  
22 Petition should not be granted within three days;
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- 1 d. Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner or, in  
2 the alternative, provide Petitioner with a bond hearing pursuant to 8 U.S.C. §  
3 1226(a) within seven days;
- 4 e. Declare that Petitioner's detention is unlawful;
- 5 f. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act  
6 ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under  
7 law; and
- 8 g. Grant any other and further relief that this Court deems just and proper.

9 DATED this 3 of October 2025

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