

1 **Alfonso Morales, State Bar No. 235314**
2 LAW OFFICE OF ALFONSO MORALES, ESQ.
3 8131 Rosecrans Ave., Ste. 200
4 Paramount, CA 90723
5 Telephone: (310) 669-8700

6 Attorney for Petitioner

7 UNITED STATES DISTRICT COURT
8 DISTRICT OF NEW MEXICO

9	ERNESTO GONZALEZ RAMOS,)	Case No. 1:25-cv-00975-MLG-KRS
10)	
11	<i>Petitioner,</i>)	AMENDMENT TO
12)	PETITION FOR WRIT
13	v.)	OF HABEAS CORPUS
14)	
15	GEORGE DEDOS, in his official capacity)	
16	as Warden of Cibola County Correctional)	
17	Center;)	
18	MARY DE ANDA-YBARRA, in her)	
19	official capacity as Field Office Director)	
20	of the ICE ERO;)	
21	KRISTI NOEM, in her official capacity as)	
22	Secretary of the U.S. DHS; and)	
23	PAM BONDI, in her official capacity as)	
24	Attorney General of the United States,)	
25)	Honorable Matthew L. Garcia
26	<i>Respondents.</i>)	United States District Judge
27)	

1 **I. INTRODUCTION**

2 Petitioner Ernesto Gonzalez Ramos (“Petitioner”) respectfully submits this
3 Amendment to Petition for Writ of Habeas Corpus.

4 This Amendment addresses Petitioner’s request for relief under 8 U.S.C. §
5 1226(a) and the Fifth Amendment to the United States Constitution, asserting that
6 Petitioner’s ongoing confinement is unlawful under both the Immigration and
7 Nationality Act (“INA”) and the U.S. Constitution.

8 **II. DETENTION UNDER 8 U.S.C. § 1226(a)**

9 Petitioner’s detention arises under 8 U.S.C. § 1226(a) because he has not been
10 ordered removed and is not subject to mandatory detention under § 1226(c). Section
11 1226(a) authorizes the Attorney General, through the Department of Homeland
12 Security (“DHS”), to detain an individual pending completion of removal
13 proceedings, but it also provides the discretion to release the person on bond or
14 conditional parole. 8 U.S.C. § 1226(a)(2).

15 By regulation, an immigration officer “may release” a noncitizen if the individual
16 “would not pose a danger to property or persons” and “is likely to appear for any
17 future proceeding.” 8 C.F.R. § 236.1(c)(8). A person detained under § 1226(a) may
18 also seek a custody redetermination before an Immigration Judge (“IJ”), who must
19 evaluate whether the person presents a flight risk or danger to the community. 8
20 C.F.R. §§ 236.1(d)(1), 1003.19(a); *Matter of Guerra*, 24 I. & N. Dec. 37 (BIA 2006).

21 This statutory and regulatory scheme reflects Congress’s intent that detention
22 under § 1226(a) be discretionary and individualized, not automatic or prolonged.
23 “Federal regulations provide that aliens detained under § 1226(a) receive bond
24 hearings at the outset of detention.” *Jennings*, 583 U.S. at 306 (citing 8 C.F.R. §
25 1236.1(d)(1)); *Mosqueda*, 2025 WL 2591530, at *3 (same); see also *Rodriguez Diaz*,
26 53 F.4th at 1202 (“Section 1226(a) and its implementing regulations provide extensive
27 procedural protections that are unavailable under other detention provisions, including
28 . . . an initial bond hearing before a neutral decisionmaker.”).

1 Here, Petitioner’s custody is governed by § 1226(a), yet no individualized bond
2 hearing has ever occurred. Petitioner has now been detained for over four months. As
3 the petition states, Petitioner is not a flight risk nor a danger to his community.
4 Petitioner has a pending asylum case with the immigration court. He has family in the
5 United States, including two U.S. citizen children and a U.S. citizen grandchild.
6 Petitioner also has long-term residence in the United States. Petitioner poses no
7 danger to the community and has demonstrated consistent compliance with
8 immigration requirements. He has maintained steady employment, supported his
9 family, and has cooperated with immigration authorities. Nothing in the record
10 indicates he would flee or pose any threat to public safety. Because § 1226(a)
11 detention is discretionary, not mandatory, Respondents’ failure to provide Petitioner
12 with an individualized bond determination violates both the statute and its
13 implementing regulations. The government’s omission has converted a limited civil
14 measure into arbitrary detention.

15 Petitioner respectfully requests that the Court order Respondents to provide him
16 with an immediate, individualized bond hearing before a neutral decisionmaker
17 consistent with § 1226(a) and 8 C.F.R. § 236.1, at which the government must
18 demonstrate by clear and convincing evidence that continued detention is necessary to
19 prevent flight or danger to the community. If such a hearing cannot be promptly
20 provided, Petitioner asks that the Court order his release under reasonable conditions
21 of supervision.

22 **III. PROLONGED DETENTION WITHOUT AN INDIVIDUALIZED BOND**
23 **HEARING VIOLATES THE FIFTH AMENDMENT’S DUE PROCESS**
24 **CLAUSE**

25 The Fifth Amendment’s “Due Process Clause applies to all ‘persons’ within the
26 United States, including aliens, whether their presence here is lawful, unlawful,
27 temporary, or permanent.” *Zadvydas*, 533 U.S. at 693. That Clause: forbids the
28 Government to “depriv[e]” any “person . . . of . . . liberty . . . without due process of

1 law.” Freedom from imprisonment—from government custody, detention, or other
2 forms of physical restraint—lies at the heart of the liberty that Clause protects. *See*
3 *Foucha v. Louisiana*, 504 U.S. 71, 80, 112 S. Ct. 1780, 118 L.Ed.2d 437 (1992).

4 “The Fifth Amendment entitles aliens to due process of law in deportation
5 proceedings.” *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1205 (9th Cir. 2022)
6 (quoting *Hussain v. Rosen*, 985 F.3d 634, 642 (9th Cir. 2021) (quoting *Reno v. Flores*,
7 507 U.S. 292, 306 (1993))). The Supreme Court has recognized that detention violates
8 due process unless it occurs in a criminal proceeding with adequate procedural
9 safeguards, or under narrow, non-punitive circumstances where the government
10 demonstrates a special justification outweighing the individual’s liberty interest.
11 *United States v. Salerno*, 481 U.S. 739, 746 (1987); *Kansas v. Hendricks*, 521 U.S.
12 346, 356 (1997). Detaining a person for months without a hearing before a neutral
13 decisionmaker does not meet that standard.

14 Under § 1226(a) the government may detain a non-citizen during his removal
15 proceedings, release him on bond, or release him on conditional parole. By regulation,
16 immigration officers can release a non-citizen if the non-citizen demonstrates that he
17 “would not pose a danger to property or persons” and “is likely to appear for any
18 future proceeding.” 8 C.F.R. § 236.1(c)(8). Because § 1226(a) detention is
19 discretionary, not mandatory, Respondents’ failure to provide the bond procedures
20 required by their own regulations renders Petitioner’s confinement unlawful. *See*
21 *Morton v. Ruiz*, 415 U.S. 199, 235 (1974) (“Where the rights of individuals are
22 affected, it is incumbent upon agencies to follow their own procedures.”).

23 In practice, the government has systematically deprived any noncitizen, like
24 Petitioner, who entered without inspection or admission of the opportunity for bond
25 hearings under § 1226(a). In *Matter of Yajure-Hurtado*, 27 I. & N. Dec. 456 (BIA
26 2018), the Board of Immigration Appeals held that Immigration Judges lack
27 jurisdiction to conduct bond proceedings for individuals who entered the United States
28 without inspection and who have never subsequently been admitted into lawful status.

1 Under *Yajure Hurtado*, such noncitizens are categorically deemed ineligible for bond
2 hearings before the immigration court, regardless of their equities, family ties, or
3 community history. However, Federal courts retain the power to remedy unlawful or
4 unconstitutional detention by ordering appropriate relief, including a bond hearing or
5 release. See *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (recognizing habeas corpus
6 as the mechanism to challenge the lawfulness of immigration detention).

7 Here, Petitioner’s custody is governed by § 1226(a). Petitioner has now been
8 detained for over four months while his asylum application remains pending before
9 the Immigration Court. During this time, no Immigration Judge has found that he is a
10 flight risk or danger, and the government has provided no evidence justifying
11 continued confinement. Petitioner has lived in the United States for almost twenty-
12 seven years; he is the father of two U.S. citizen children and the grandfather of a U.S.
13 citizen grandchild. He cares deeply for his family and plays an active role in
14 supporting his U.S. citizen children and grandchild. His pending asylum application
15 with the Immigration Court and his strong family ties show that he is likely to appear
16 to future proceedings. Petitioner’s decision to retain counsel and actively pursue
17 asylum relief underscores his good faith and clear intent to comply with all
18 immigration requirements. These factors show he is not a danger to his community
19 and his intent to comply with immigration proceedings. By keeping Petitioner
20 detained for months without a hearing that the law requires, the government has
21 ignored the basic procedures that make civil detention fair and constitutional.

22 Accordingly, Petitioner respectfully requests that this Court order Respondents to
23 provide him with an immediate individualized bond hearing before a neutral
24 decisionmaker consistent with § 1226(a) and 8 C.F.R. § 236.1, or, if such a hearing
25 cannot promptly occur, order his immediate release under reasonable conditions of
26 supervision.

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1 **IV. CONCLUSION**

2 For the foregoing reasons, Petitioner’s continued detention under 8 U.S.C. §
3 1226(a) without an individualized bond determination violates both the governing
4 federal regulations and the Fifth Amendment’s Due Process Clause. Although §
5 1226(a) authorizes temporary detention pending removal proceedings, it does not
6 authorize indefinite confinement absent a meaningful hearing before a neutral
7 decisionmaker. The government’s failure to follow its own regulations and to provide
8 Petitioner with the process guaranteed by law renders his ongoing detention arbitrary,
9 excessive, and unconstitutional.

10 Accordingly, Petitioner respectfully requests that this Court:

- 11 1. Grant the Petition for Writ of Habeas Corpus;
- 12 2. Order Petitioner’s immediate release under appropriate conditions of
13 supervision, or, in the alternative,
- 14 3. Direct Respondents to provide Petitioner with a prompt, individualized bond
15 hearing before an Immigration Judge pursuant to 8 U.S.C. § 1226(a), at which the
16 government must bear the burden of proving by clear and convincing evidence that
17 continued detention is necessary to prevent flight or danger to the community; and
- 18 4. Grant such other and further relief as the Court deems just and proper.

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21 Dated: November 12, 2025

Respectfully submitted,

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25 /s/ Alfonso Morales
26 Alfonso Morales, Esq.
27 *Attorney for Ernesto Gonzalez Ramos*
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