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16 *Attorneys for Petitioner*

17 **UNITED STATES DISTRICT COURT**  
18 **FOR THE DISTRICT OF ARIZONA**

19 **Laiane Rodrigues da Silva**

20 *Petitioner,*

21 v.

22 Fred Figueroa, Warden, Eloy Detention  
23 Center; John Cantu, Field Office Director,  
24 Phoenix Arizona Field Office, United States  
25 Immigration and Customs Enforcement; Todd  
26 Lyon, Acting Director, United States  
27 Immigration and Customs Enforcement;  
28 Kristi Noem, Secretary of Homeland  
29 Security; Pamela Bondi, United States  
30 Attorney General, *in their official capacities,*

*Respondents.*

Civil Action No.:

**PETITION FOR WRIT OF  
HABEAS CORPUS AND  
COMPLAINT FOR  
DECLARATORY INJUNCTIVE  
RELIEF**

1 **PETITION FOR A WRIT OF HABEAS CORPUS AND COMPLAINT FOR**  
2 **DECLARATORY INJUNCTIVE RELIEF**

3 **INTRODUCTION**

4  
5 1. Petitioner Laiane Rodrigues da Silva (“Ms. Rodrigues da Silva”) is a citizen and  
6 national of Brazil. On August 29, 2019, she entered the United States without  
7 inspection apprehended by U.S. Border Patrol in El Paso, TX. Ms. Rodrigues da  
8 Silva was issued a Notice to Appear (“NTA”) (Form I-862) and placed in removal  
9 proceedings pursuant to 8 U.S.C. § 1229a. Ms. Rodrigues da Silva filed for asylum  
10 before the Executive Office for Immigration Review in Boston, Massachusetts. On  
11 January 29, 2024, proceedings were terminated against her.<sup>1</sup>

12  
13 2. Ms. Rodrigues da Silva has never left the United States since she entered on August  
14 29, 2019. She was released on her own recognizance by U.S. Border Patrol. She  
15 resides in the State of Massachusetts along with her family. Ms. Rodrigues da  
16 Silva’s immigration counsel is also located in the State of Massachusetts.

17  
18 3. On September 6, 2025, Ms. Rodrigues da Silva was detained on a *warrantless* arrest  
19 by ICE while ICE officers were searching for an individual named Amarildo  
20 Teixeira de Oliveira who previously lived at the same address as Ms. Rodrigues da  
21 Silva. She was stopped, questioned and detained without a warrant even though ICE  
22

23  
24 <sup>1</sup> At the time of an NTA’s issuance (or any time thereafter until the removal proceedings  
25 are completed), the Attorney General – through ICE agents- may issue a warrant of arrest  
26 known as a Form I-200 that provides authority for the arrest of the alien name in the NTA.  
27 *Arizona v United States*, 567 US 387, 407 (2012) (*citing* 8 U.S.C §1226(a)); 8 C.F.R.  
§§236.1(b), 1236.1(b). “The cancellation of a notice to appear also cancels any outstanding  
warrants issued by the Attorney General for the aliens arrest.” 8 C.F.R. §239.2(e).

1 officers indicated she was not the targeted individual, lacking probable cause and  
2 no indication she would likely escape before a warrant could be obtained in violation  
3 of 8 U.S.C. §1357(a)(2). She is currently detained at Eloy Detention Center in Eloy,  
4 Arizona.

5  
6 4. On September 6, 2025, Ms. Rodrigues da Silva was issued another Notice to Appear  
7 (Form I-862), identifying Ms. Rodrigues da Silva as “an alien present in the United  
8 States who has not been admitted or paroled.” She was not charged as an arriving  
9 alien.<sup>2</sup>

10  
11 5. This Notice to Appear also charged Ms. Rodrigues da Silva with two counts of  
12 removability:

13 1. INA 212(a)(6)(A)(i), “an alien present in the United States without being  
14 admitted or paroled, or who arrived in the United States at any time or place  
15 other than as designated by the Attorney General.

16  
17 2. INA 212(a)(7)(A)(i)(I), “an immigrant who, at the time of application for  
18 admission, is not in the possession of a valid unexpired immigrant visa,  
19

20  
21 <sup>2</sup> 8 C.F.R section 1.2 defines Arriving alien as “means an **applicant for admission** coming  
22 or attempting to come into the United States at a port-of-entry, or an alien seeking transit  
23 through the United States at a port-of-entry, or an alien interdicted in international  
24 or United States waters and brought into the United States by any means, whether or not  
25 to a designated port-of-entry, and regardless of the means of transport. An arriving  
26 alien remains an arriving alien even if paroled pursuant to section 212(d)(5) of the Act,  
27 and even after any such parole is terminated or revoked. However, an arriving alien who  
was paroled into the United States before April 1, 1997, or who was paroled into  
the United States on or after April 1, 1997, pursuant to a grant of advance parole which  
the alien applied for and obtained in the United States prior to the alien's departure from  
and return to the United States, will not be treated, solely by reason of that grant of parole,  
as an arriving alien under section 235(b)(1)(A)(i) of the Act.” (emphasis added).

1 reentry permit, border crossing card, or other valid entry document required  
2 by the Act, and the valid unexpired passport, or other suitable travel  
3 document, or document of identity and nationality as required under the  
4 regulations issued by the Attorney General under section 211(a) of the Act.”  
5

- 6 6. Despite being a long-term resident of Massachusetts, Ms. Rodrigues da Silva was  
7 denied bond at a custody redetermination hearing on October 22, 2025 because the  
8 Immigration Judge erroneously concluded that she is an “applicant for admission”  
9 subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). This erroneous  
10 position, adopted after *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), is  
11 rejected by multiple District Courts within the Ninth Circuit, which hold that  
12 noncitizens arrested in the interior are detained under § 1226(a) and are entitled to  
13 bond hearings. *See Rosado v. Figueroa, et al.*, No. 2:25-CV-02157 (D. Ariz 2025);  
14 *see also Rodriguez Vazquez v Bostock, et. al.*, No. 3:25-CV-05240 (W.D. Wash.  
15 2025).  
16  
17  
18 7. However, 8 U.S.C. §1225(b)(2)(A) does not apply to individuals similarly situated  
19 to Ms. Rodrigues da Silva, who are present in the United States. Instead, such  
20 individuals are subject to detention under a different statute, 8 U. S. C. §1226(a),  
21 and are eligible for release on bond.  
22  
23 8. Nevertheless, earlier in July 2025, ICE released a memorandum instructing its  
24 attorneys to coordinate with the Department of Justice, the agency housing EOIR,  
25  
26  
27

1 to reject bond redetermination hearings for applicants who arrived in the United  
2 States without documents.<sup>3</sup>

3  
4 9. This Petition challenges the government's unlawful detention of Ms. Rodrigues da  
5 Silva and seeks an order requiring ICE to provide her an individualized custody  
6 redetermination hearing before an Immigration Judge under 8 U.S.C. § 1226(a).

7  
8 **JURISDICTION AND VENUE**

9  
10 10. This Court has jurisdiction under 28 U.S.C. § 2241, 28 U.S.C. § 1331, and Article  
11 I, § 9 cl. 2 of the Constitution (Suspension Clause). Venue is proper in this District  
12 because Ms. Rodrigues da Silva is detained within the District of Arizona.<sup>4</sup>

13  
14 **PARTIES**

15  
16 11. Petitioner Laiane Rodrigues da Silva is a citizen and national of Brazil and resident  
17 of Lowell, Massachusetts, who is currently detained in the Eloy Detention Center.

18 12. Respondents Fred Figueroa, Warden of the Eloy Detention Center; John Cantu,  
19 Field Office Director, Phoenix Arizona Field Office, United States Immigration and  
20

21  
22 <sup>3</sup> "ICE Says Many In Immigration Detention No Longer Qualify For Bond Hearings,"  
23 *CBS News* (Jul. 15, 2025) [https://www.cbsnews.com/news/ice-immigration-](https://www.cbsnews.com/news/ice-immigration-detention-bond-hearings/)  
24 [detention- bond-hearings/](https://www.cbsnews.com/news/ice-immigration-detention-bond-hearings/) ; "ICE declares millions of undocumented immigrants  
ineligible for bond hearings," *The Washington Post* (Jul. 15, 2025)  
[https://www.washingtonpost.com/immigration/2025/07/14/ice-trump-undocumented-](https://www.washingtonpost.com/immigration/2025/07/14/ice-trump-undocumented-immigrants-bond-hearings/)  
[immigrants-bond-hearings/](https://www.washingtonpost.com/immigration/2025/07/14/ice-trump-undocumented-immigrants-bond-hearings/)

25 <sup>4</sup> See *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004) (*holding as a general matter, a habeas*  
26 *petitioner must file his or her petition in the district of confinement*); see also *Ortiz-*  
27 *Sandoval v. Gomez*, 81 F.3d 891, 894 (9<sup>th</sup> Cir. 1996).

1 Customs Enforcement; Todd Lyon, Acting Director, United States Immigration and  
2 Customs Enforcement; Kristi Noem, Secretary of Department of Homeland  
3 Security; Pamela Bondi, United States Attorney are federal officials responsible for  
4 her detention and enforcement of immigration laws in their official capacities.  
5

6  
7 **FACTUAL BACKGROUND**

8 13. Petitioner entered the United States without inspection on or about August 29, 2019.

9 She was apprehended by U.S. Border Patrol in El Paso, TX. Ms. Rodrigues da Silva  
10 was issued a Notice to Appear (“NTA”) (Form I-862) and placed in removal  
11 proceedings pursuant to 8 U.S.C. § 1229a.  
12

13 14. Ms. Rodrigues da Silva has never left the United States since she entered on August  
14 29, 2019. She was released on her own recognizance by U.S. Border Patrol.  
15

16 15. Ms. Rodriguez da Silva established residence in Lowell, Massachusetts with her  
17 family.  
18

19 16. She has no criminal record and has significant community and family ties.

20 17. Ms. Rodrigues da Silva filed for asylum before the Executive Office for  
21 Immigration Review, Immigration Court in Boston, Massachusetts.  
22

23 18. On January 29, 2024, proceedings were terminated against her.<sup>5</sup>  
24

25 <sup>5</sup> At the time of an NTA’s issuance (or any time thereafter until the removal proceedings  
26 are completed), the Attorney General – through ICE agents- may issue a warrant of arrest  
27 known as a Form I-200 that provides authority for the arrest of the alien name in the NTA.  
*Arizona v United States*, 567 US 387, 407 (2012) (citing 8 U.S.C §1226(a)); 8 C.F.R.  
§§236.1(b), 1236.1(b). “The cancellation of a notice to appear also cancels any outstanding  
warrants issued by the Attorney General for the aliens arrest.” 8 C.F.R. §239.2(e).

1 19. On September 6, 2025, Ms. Rodrigues da Silva was detained on a *warrantless* arrest  
2 by ICE while ICE officers were searching for an individual named Amarildo  
3 Teixeira de Oliveira who previously lived at the same address as Ms. Rodrigues da  
4 Silva.  
5

6 20. Ms. Rodriguez da Silva was stopped, questioned and detained without a warrant by  
7 ICE officers. In the I-213 dated September 6, 2025, ICE officers indicate she was  
8 stopped despite not being the targeted individual, lacking probable cause and no  
9 indication she would likely escape before a warrant could be obtained in violation  
10 of 8 U.S.C. §1357(a)(2).  
11

12 21. On September 6, 2025, Ms. Rodrigues da Silva was issued another Notice to Appear  
13 (Form I-862), identifying Ms. Rodrigues da Silva as “an alien present in the United  
14 States who has not been admitted or paroled.” She was not charged as an arriving  
15 alien.<sup>6</sup>  
16

17 22. This Notice to Appear also charged Ms. Rodrigues da Silva with two counts of  
18 removability:  
19

---

20 <sup>6</sup> 8 C.F.R section 1.2 defines Arriving alien as “means an **applicant for admission** coming  
21 or attempting to come into the United States at a port-of-entry, or an alien seeking transit  
22 through the United States at a port-of-entry, or an alien interdicted in international  
23 or United States waters and brought into the United States by any means, whether or not  
24 to a designated port-of-entry, and regardless of the means of transport. An arriving  
25 alien remains an arriving alien even if paroled pursuant to section 212(d)(5) of the Act,  
26 and even after any such parole is terminated or revoked. However, an arriving alien who  
27 was paroled into the United States before April 1, 1997, or who was paroled into  
the United States on or after April 1, 1997, pursuant to a grant of advance parole which  
the alien applied for and obtained in the United States prior to the alien's departure from  
and return to the United States, will not be treated, solely by reason of that grant of parole,  
as an arriving alien under section 235(b)(1)(A)(i) of the Act.” (emphasis added).

- 1 1. INA 212(a)(6)(A)(i), “an alien present in the United States without being  
2 admitted or paroled, or who arrived in the United States at any time or place  
3 other than as designated by the Attorney General.  
4
- 5 2. INA 212(a)(7)(A)(i)(I), “an immigrant who, at the time of application for  
6 admission, is not in the possession of a valid unexpired immigrant visa,  
7 reentry permit, border crossing card, or other valid entry document required  
8 by the Act, and the valid unexpired passport, or other suitable travel  
9 document, or document of identity and nationality as required under the  
10 regulations issued by the Attorney General under section 211(a) of the Act.”  
11
- 12 23. She was transported from the State of Massachusetts to Eloy, Arizona and is  
13 currently detained at the Eloy Detention Center.
- 14 24. Despite being a long-term resident of Massachusetts, ICE detained Ms. Rodriguez  
15 da Silva without a Bond.
- 16 25. On October 22, 2025, Ms. Rodrigues da Silva was denied bond at a custody  
17 redetermination by the Immigration Judge, who erroneously concluded that she is  
18 an “applicant for admission” subject to mandatory detention under 8 U.S.C. §  
19 1225(b)(2)(A), citing *Matter of Yajure Hurtado* (2025).  
20
- 21 26. On information and belief, the Immigration Court declined jurisdiction for a bond  
22 hearing under 8 C.F.R. § 1236(a), erroneously finding her subject to 8 U.S.C. §  
23 1225(b)(2)(A).  
24
- 25 27. Ms. Rodrigues da Silva is neither a danger nor a flight risk and seeks a lawful bond  
26 hearing consistent with due process and the Immigration and Nationality Act.  
27

1 28. Any appeal to the Board of Immigration Appeals is futile.  
2

3 **CAUSES OF ACTION**

4 **COUNT ONE**

5 **Violation of the Administrative Procedure Act Unlawful Denial of Bond**  
6

7 **Section 1226(a)—Not § 1225(b)—Governs Petitioner’s Detention:**

8 29. Under long-standing statutory interpretation, 8 U.S.C. § 1226(a)<sup>7</sup> applies to persons  
9 already present in the United States and arrested on immigration warrants pending  
10 a 8 U.S.C. § 1229a removal proceeding. See *Jennings v. Rodriguez*, 583 U.S. 281,  
11 289 (2018) (“Section 1226 authorizes detention of certain aliens already in the  
12 country pending the outcome of removal proceedings.”); *Hernandez v. Sessions*,  
13 872 F.3d 976, 982 (9th Cir. 2017).  
14

15 30. By contrast, § 1225(b)<sup>8</sup> applies to individuals “seeking admission” at the border.  
16 The Ninth Circuit has emphasized that *inspection* and *admission* procedures occur  
17 at ports of entry, not within the interior. See *Posos-Sanchez v. Garland*, 3 F.4th  
18  
19

20  
21 <sup>7</sup> The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of  
22 the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996,  
23 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)

24 <sup>8</sup> Following enactment of the IIRIRA, EOIR drafted new regulations explaining  
25 that, in general, people who entered the country without inspection were not considered  
26 detained under § 1225 and that they were instead detained under § 1226(a). See  
27 *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).

1 1176, 1183 (9th Cir. 2021) (inspection must take place “at a port of entry” for lawful  
2 admission). Petitioner, arrested years after entry, cannot be “seeking admission”  
3 within the plain meaning of the statute.  
4

5 31. District courts in the Ninth Circuit have agreed. See, e.g.: *Vasquez Garcia v. Noem*,  
6 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025) (rejecting DHS claim that long-term  
7 resident EWI is detained under § 1225(b)); *Arrazola-Gonzalez v. Noem*, 2025 WL  
8 2379285 (C.D. Cal. Aug. 15, 2025) (holding § 1226(a) governs detention of EWI  
9 living in U.S. for years); *Benitez v. Noem*, No. 5:25-cv-02190 (C.D. Cal. Aug. 26,  
10 2025) (same). See *Rosado v. Figueroa, et al*, No. 2:25-CV-02157 (D. Ariz 2025);  
11 see also *Rodriguez Vazquez v Bostock, et. al.*, No. 3:25-CV-05240 (W.D. Wash.  
12 2025). These cases follow *Jennings* and reaffirm that 8 U.S.C. §1226(a) is the  
13 default rule for individuals arrested inside the United States.  
14  
15

## 16 COUNT TWO

### 17 *Violation of the Administrative Procedure Act Unlawful Denial of Bond*

#### 18 19 i. The Government’s Reliance on *Matter of Yajure Hurtado* Is Not Binding:

20 32. Following *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), federal  
21 courts no longer defer to agency interpretations under *Chevron*. The Ninth Circuit  
22 has expressly stated that courts “must exercise independent judgment” in  
23 interpreting the INA. *Lopez v. Garland*, 116 F.4th 1032, 1036 (9th Cir. 2024).  
24 District courts across the circuit have since found *Matter of Yajure Hurtado*  
25 unpersuasive. See *Lopez Benitez v. Francis*, 2025 WL 2267803 (S.D.N.Y. Aug. 8,  
26  
27

1 2025) (collecting Ninth Circuit decisions); *Rodriguez v. Bostock*, 2025 WL 1193850  
2 (W.D. Wash. Apr. 24, 2025).  
3

4 ii. Applying 8 U.S.C. § 1225(b)(2)(A) Here Violates the INA's Text and Structure:

5 33. The Ninth Circuit has consistently required adherence to statutory context: 8 U.S.C.  
6 §1225 applies at entry; 8 U.S.C. §1226 governs detention pending removal for  
7 persons already inside the United States. *Jennings*, 583 U.S. at 289; *Hing Sum v.*  
8 *Holder*, 602 F.3d 1092, 1100 (9th Cir. 2010). Applying 8 U.S.C. §1225 to interior  
9 arrests collapses the statutory distinction and renders superfluous the 2025 Laken  
10 Riley Act amendment to 8 U.S.C. § 1226(c)(1)(E), which added mandatory  
11 detention for certain criminal noncitizens who entered without admission—a result  
12 several district courts within this Circuit have rejected. *See Rosado v. Figueroa, et*  
13 *al.*, No. 2:25-CV-02157 (D. Ariz 2025); *see also Rodriguez Vazquez v Bostock, et.*  
14 *al.*, No. 3:25-CV-05240 (W.D. Wash. 2025).  
15  
16  
17

18 **COUNT THREE**

19 **Violation of Procedural Due Process**

20  
21 **Petitioner's Detention Without a Bond Hearing Violates Due Process:**

22 34. "Freedom from imprisonment lies at the heart of the liberty protected by the Due  
23 Process Clause." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). In the Ninth Circuit,  
24 prolonged or mandatory detention without an individualized hearing violates due  
25  
26  
27

1 process. See *Hernandez v. Sessions*, 872 F.3d 976, 991–93 (9<sup>th</sup> Cir. 2017) (requiring  
2 individualized findings of danger and flight risk with government burden of proof).

3  
4 35. Ms. Rodrigues da Silva has been denied any bond hearing despite being detained  
5 under a statute that confers discretion to release on bond— 8 U.S.C. §1226(a). Her  
6 continued detention violates both the statute and the Fifth Amendment.

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

13  
14 37. Ms. Rodrigues da Silva has a fundamental interest in liberty and being free from  
15 official restraint.

16  
17 38. The government's detention of Ms. Rodrigues da Silva without a bond  
18 redetermination hearing to determine whether they are a flight risk or danger to  
19 others violates her right to due process.

20  
21  
22 **PRAYER FOR RELIEF**

23 Wherefore, Petitioner respectfully requests this Court to grant the following:

- 24 (1) Assume jurisdiction over this matter;
- 25 (2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition  
26 should not be granted within three (3) days;
- 27 (3) Declare that the refusal to allow Petitioners a bond redetermination hearing before  
an immigration judge violates the INA, APA, and Due Process;

- 1 (4) Declare that Petitioner's detention is unlawful;
- 2 (5) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner
- 3 immediately, or, in the alternative, provide Petitioner with a bond hearing within 7
- 4 days and order Petitioner's release on conditions the Court deems just and proper;
- 5
- 6 (6) Award reasonable attorneys' fees and costs pursuant to the Equal Access to Justice
- 7 Act, 28 U.S.C. § 2412(d), 5 U.S.C. §504, or any other applicable law; and
- 8
- 9 (7) Grant any further relief this Court deems just and proper.

10 Respectfully submitted: October 27, 2025.

11 /s/Karina J. Ordonez  
12 Karina J. Ordonez  
13 Karina Ordonez Law Office PLLC  
2642 E Thomas Rd.  
Phoenix, AZ 85016

14 /s/Noel Elco Rascón  
15 Noel Elco Rascón, Esq.  
16 RASCON LAW, PLC  
2 N. Central Ave., Suite 1800  
17 Phoenix, AZ 85004-2139  
18 *Counsels for Petitioner*

19 **CERTIFICATE OF SERVICE**

20 I certify that on the 27<sup>th</sup> day of October, 2025, I electronically

21 transmitted this document to the Clerk's office using the CM/ECF system for filing and

22 transmittal of a Notice of Electronic Filing.

23

24 In addition, Counsel mailed the Petition for Writ of Habeas Corpus

25 and Attached Exhibits as follows:

26 David Rivas,  
27 Warden of San Luis Regional Detention Center

1 406 North Avenue D  
2 San Luis, AZ 85349

3 John Cantu  
4 Field Office Director,  
5 Phoenix Arizona Field Office,  
6 United States Immigration and Customs Enforcement  
7 2035 N Central Ave,  
8 Phoenix, AZ 85004

9 TODD M. LYONS,  
10 Acting Director,  
11 United States Immigration and Customs Enforcement  
12 500 12<sup>th</sup> St SW  
13 Washington, DC 20536

14 KRISTI NOEM,  
15 Secretary of Homeland Security  
16 U.S. Department of Homeland Security  
17 2707 Martin Luther King, Jr. Avenue, S.E.  
18 Washington, D.C. 20528

19 PAMELA JO BONDI,  
20 United States Attorney General,  
21 U.S. Department of Justice  
22 950 Pennsylvania Avenue, NW  
23 Washington, DC 20530-0001

24 Finally, Counsel also emailed the US Attorney's Office Civil Chief  
25 Katherine Branch at her email address to [Katherine.branch@usdoj.gov](mailto:Katherine.branch@usdoj.gov) and Mr. John  
26 Cantu to his email address [john.e.cantu@ice.dhs.gov](mailto:john.e.cantu@ice.dhs.gov)  
27

Date: October 27, 2025

BY: /s/Karina J. Ordonez  
Karina J. Ordonez, Esq.,  
*Attorney for Petitioner*