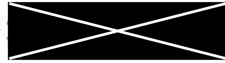
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

HAROLD FABIAN CORREA, Petitioner, v. JUAN BALTAZAR, *in his official capacity* as Warden of the Aurora ICE Processing Center; ROBERT HAGAN, *in his official capacity* as Field Office Director of the Aurora Field Office of Enforcement and Removal Operations, U.S. Immigrations and Customs Enforcement; TODD M. LYONS, *in his official capacity* as Acting Director, Immigration and Customs Enforcement, KRISTI NOEM, *in her official capacity* as Secretary, U.S. Department of Homeland Security; and PAMELA JO BONDI, in her official capacity as Attorney General of the United States; Respondents.	Case No. PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF **A #** 

INTRODUCTION

1. Petitioner-Plaintiff ("Petitioner"), Mr. Harold Fabian Correa, is a citizen of Colombia. Based on information and belief, U.S. Immigration and Customs Enforcement ("ICE") officers apprehended him on August 13, 2025. He was issued a Notice to Appear, also dated August 13, 2025. *See* Notice to Appear, Exhibit A. ICE is now unlawfully detaining him pursuant §1225(b).

2. Despite Petitioner's repeated requests for a bond redetermination hearing, he has not been granted release on bond to pursue his removal and asylum proceedings outside of detention. *See* Orders of Immigration Judge, Exhibits D and F. ICE continues to detain him under the authority of §1225(b), which now constitutes unlawful detention.

3. Petitioner is currently detained at the GEO Contract Detention Facility in Aurora, Colorado. *See* ICE Detainee Locator Results, Exhibit C.

4. On August 13, 2025, Petitioner was encountered in his workplace and his wife's business [redacted] He was detained pending a credible fear interview. He was issued a Notice to Appear ("NTA") pursuant to 8 U.S.C. § 1229. *See* Notice to Appear, Exhibit A.

5. On November 6, 2025, ICE issued a Form I-261, amending the Notice to Appear by adding an additional charge of inadmissibility under the Immigration and Nationality Act. *See* Additional Charges of Inadmissibility/Deportability, Exhibit B

6. On August 26, 2025, Petitioner filed a Motion for Custody Redetermination and Bond, a hearing was set for September 04, 2025, at which the Petitioner withdrew the bond request. *See* Order of the Immigration Judge, Exhibit D.

7. On September 18, 2025, Mr. Correa filed an I-589, Application for Asylum with the Immigration Court. *See* I-589 Application for Asylum and Withholding of Removal, Exhibit E.

8. On July 8, 2025, the U.S. Department of Homeland Security ("DHS") issued a new policy memorandum to all employees of ICE stating that "this message serves as notice that DHS, in coordination with the Department of Justice ("DOJ"), has revisited its legal position on detention and release authorities. DHS has determined that section 235 of the Immigration

and Nationality Act ("INA"), rather than section 236, is the applicable immigration detention authority for all applicants for admission. The following interim guidance is intended to ensure immediate and consistent application of the Department's legal interpretation while additional operational guidance is developed." Memorandum, U.S. Immigration & Customs Enf't, Interim Guidance Regarding Detention Authority for Applications for Admission (July 8, 2025), https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission (last visited on November 19, 2025). *See* Exhibit J.

9. On September 5, 2025, the Board of Immigration Appeals ("BIA") issued a precedential decision that unlawfully reinterpreted the INA. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), attached hereto as Exhibit K. Prior to this decision, noncitizens like Petitioner who had lived in the U.S. for many years, and were apprehended by ICE in the interior of the country, were detained pursuant to 8 U.S.C. § 1226(a) and eligible to seek bond hearings before Immigration Judges ("IJs"). Instead, in conflict with nearly thirty years of legal precedent, ICE now contends that Petitioner is considered subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and has no opportunity for release on bond while his removal proceedings are pending.

10. On November 03, 2025, Petitioner filed a second Motion for Custody Redetermination and Bond, a bond hearing was scheduled for November 7, 2025 and the Immigration Judge denied bond, stating that court lacks jurisdiction because Petitioner "is detained under section 235 of the Act," citing *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). *See* Order of the Immigration Judge, Exhibit F.

11. In this Order, the IJ stated, "Alternatively, should the court have jurisdiction to address

custody under section 236(a) of the Act, the court would grant a bond in the amount of $20,000 with any conditions deemed necessary by the Department of Homeland Security." *See* Order of the Immigration Judge, Exhibit F.

12. Petitioner entered the United States on or about August 26, 1999, through the El Paso port of entry. *See* Affidavit of Petitioner submitted to Immigration Court, Exhibit H. He was near the El Paso–Juárez port of entry with his friend and her brother when they saw a large group of people, approximately 100 to 200 individuals, gathered on the Mexican side of the border. *Id.* Curious, they inquired about the situation and were informed that the group was preparing to cross into the United States. *Id.* Petitioner and his companions decided to join the group. *Id.* They positioned themselves in the middle of the crowd, and as the group began to move, a path opened, allowing them to walk across the border. *Id.* Although immigration officials were present and questioned some individuals, most of the group, including Petitioner and his friends, were not questioned. *Id.*

13. Petitioner's entry qualifies as a legal admission to the United States under *Matter of Quilantan*, 25 I&N Dec. 285, 293 (BIA 2010), as he entered through a port of entry and was not questioned by immigration authorities, and his entry was therefore "procedurally regular." *Id.* at 290-91.

14. Petitioner's admission makes him eligible to seek Adjustment of Status to that of a permanent resident of the United States through his son, a U.S. citizen, under 8 U.S.C. §1255(a). Petitioner's son has already filed a Form I-130 (Petition for Alien Relative), which was received by United States Citizenship and Immigration Services ("USCIS") on October 31, 2025. *See* Receipt Notice for I-130 Petition for Alien Relative, Exhibit M, and Birth Certificate of Fabian Andres Correo, Petitioner's son, Exhibit N.

15. Petitioner submitted Amended Pleadings to the Immigration Court on October 31, 2025, reflecting that his entry into the United States was procedurally regular, and denying the allegation in the Notice to Appear that he was not admitted or paroled. *See* Petitioner's Amended Pleadings, Exhibit G. ICE Counsel objected to these Amended Pleadings. *See* ICE Opposition to Amended Pleadings, Exhibit I. To the best of undersigned Counsel's knowledge, the Immigration Judge has not yet ruled on this objection.
16. Petitioner is scheduled for an Individual hearing before the Immigration Court on his I-589 Application for Asylum on November 24, 2025. *See* Notice of Hearing, Exhibit L.
17. If the IJ denies Petitioner's I-589 Application, he may be ordered removed from the United States without the opportunity to apply for Adjustment of Status under 8 U.S.C. §1255(a), through his son's petition. If Petitioner is released from ICE custody, he will seek the transfer of his Immigration Court proceedings from the Aurora Immigration Court to the Denver Immigration Court, and seek a continuance of his Individual Hearing to allow him to apply for Adjustment of Status.
18. Petitioner's detention pursuant to §1225(b)(2)(A) violates the plain language of the INA and its implementing regulations. Petitioner, who has resided in the U.S. for over 25 years and who was apprehended in the interior of the U.S., should not be considered an "applicant for admission" who is "seeking admission." Rather, he has been admitted, because his procedurally regular entry to the United States was an "admission" under *Matter of Quilantan*, and is not an "applicant for admission" or "seeking admission" under §1225, even under Respondents' formulation in *Matter of Yajure Hurtado*. 25 I. & N. Dec. at 293; 29 I. & N. Dec. at 220-21. He should be detained, if at all, pursuant 8 U.S.C. § 1226(a), which allows for release on conditional parole or bond.

19. Through this petition, Petitioner asks this Court to find that Respondents have unlawfully detained him under § 1225(b)(2)(A), and that his detention, if any, is appropriate under §1226(a). Further, Petitioner requests that this Court order his release on his own recognizance, and that Respondents immediately release Petitioner from custody. *See Zadvydas v. Davis*, 533 U.S. 678, 687-88 (2001). In the alternative, Petitioner asks this Court to order Respondents to release him on the bond and conditions the IJ stated that he would have granted if not for *Matter of Yajure Hurtado*. *See* Order of the Immigration Judge, Exhibit F.

CUSTODY

20. Petitioner is currently in the custody of ICE at the GEO Aurora Contract Detention Facility. *See* ICE Detainee Locator Results, Exhibit C. He is therefore in "'custody' of the Department of Homeland Security, ICE, within the meaning of the habeas corpus statute." *Jones v. Cunningham*, 371 U.S. 236, 243 (1963).

JURISDICTION

21. This court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause), and the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et. seq.*
22. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et. seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et. seq.*, the All Writs Act, 28 U.S.C. § 1651, and the Immigration and Nationality Act, 8 U.S.C. § 1252(e)(2).
23. Federal district courts have jurisdiction to hear habeas claims by non-citizens challenging both the lawfulness and the constitutionality of their detention. *See Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243

24. The Court must grant the petition for writ of habeas corpus or issue an order to show cause ("OSC") to Respondents "forthwith," unless Petitioner is not entitled to relief. *See* 28 U.S.C. § 2243. If an OSC 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.*

25. Petitioner is "in custody" for the purpose of § 2241 because he was arrested and remains detained by Respondents.

VENUE

26. Venue is properly before this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees or officers of the United States acting in their official capacity and because a substantial part of the events or omissions giving rise to the claim occurred in the District of Colorado. Petitioner is under the jurisdiction of ICE's Denver Field Office, and he is currently detained in Aurora, Colorado, at the GEO Aurora Contract Detention Facility. *See* ICE Detainee Locator Results, Exhibit C.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

27. Administrative exhaustion is unnecessary as it would be futile for Petitioner to do so. *See, e.g., Aguilar v. Lewis*, 50 F. Supp. 2d 539, 542–43 (E.D. Va. 1999).

28. It would be futile for Petitioner to seek a another custody redetermination hearing before an IJ, or to appeal the IJ's denial of November 7, 2025 to the BIA, because of the BIA's recent decision holding that anyone who has entered the U.S. without inspection (which ICE continues, incorrectly, to assert that Petitioner did) is now considered an "applicant

for admission" who is "seeking admission" and therefore subject to mandatory detention under § 1225(b)(2)(A). *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025); *see also Zaragoza Mosqueda v. Noem*, 2025 WL 2591530, at *7 (C.D. Cal. Sept. 8, 2025) (noting that BIA's decision in *Yajure Hurtado* renders exhaustion futile). *See also* Exhibits G and I.

29. Additionally, the agency does not have jurisdiction to review Petitioner's claim of unlawful custody in violation of his due process rights, and it would therefore be futile for him to pursue administrative remedies. *Reno v Amer.-Arab Anti-Discrim. Comm.*, 70 F.3d 1045, 1058 (9th Cir. 1995) (finding exhaustion to be a "futile exercise because the agency does not have jurisdiction to review" constitutional claims).

PARTIES

30. Petitioner is from Colombia and has resided in the U.S. since 1999. He is currently detained in the Aurora Contract Detention Facility in Aurora, Colorado. *See* Ice Detainee Locator Results, Exhibit C.

31. Respondent Juan Baltazar is sued in his official capacity as Warden of the Aurora Processing Center. In his official capacity, Respondent Juan Baltazar is Petitioner's immediate custodian.

32. Respondent Robert Hagan is sued in his official capacity as Field Office Director, Denver Field Office, Enforcement and Removal Operations, ICE. In his official capacity, Respondent Robert Hagan is the legal custodian of Petitioner.

33. Respondent Todd M. Lyons is sued in his official capacity as Acting Director of ICE. As the Acting Director of ICE, Respondent Lyons is a legal custodian of Petitioner.

34. Respondent Kristi Noem is sued in her official capacity as Secretary of Homeland Security.

As the head of the U.S. Department of Homeland Security, the agency tasked with enforcing immigration laws, Secretary Noem is Petitioner's ultimate legal custodian.

35. Respondent Pamela Jo Bondi is sued in her official capacity as the Attorney General of the United States. As Attorney General, she has authority over the Department of Justice and is charged with faithfully administering the immigration laws of the United States.

LEGAL BACKGROUND AND ARGUMENT

36. The INA prescribes three basic forms of detention for noncitizens in removal proceedings.

37. First, individuals detained pursuant to 8 U.S.C. § 1226(a) are generally entitled to a bond hearing, unless they have been arrested, charged with, or convicted of certain crimes and are subject to mandatory detention. *See* 8 U.S.C. §§ 1226(a), 1226(c) (listing grounds for mandatory detention); *see also* 8 C.F.R. §§ 1003.19(a) (immigration judges may review custody determinations made by DHS), 1236.1(d) (same).

38. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) as well as other recent arrivals deemed to be "seeking admission" under § 1225(b)(2).

39. Third, the INA authorizes detention of noncitizens who have received a final order of removal, including those in withholding-only proceedings. *See* 8 U.S.C. § 1231(a)–(b).

40. 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, 300-582 to 3009-583, 3009-585. Section 1226 was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).

41. Following the enactment of the IIRIRA, the U.S. Department of Justice's Executive Office

of Immigration Review ("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) ("Despite being applicants for admission, aliens who are present without having been admitted or paroled (formed referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination").

42. Thus, in the decades that followed, most people who entered without inspection, or were otherwise not in legal status, and were thereafter detained and placed in standard removal proceedings were considered for release on bond and also received bond hearings before an Immigration Judge, unless their criminal history rendered them ineligible. That practice was consistent with many more decades of prior practice, in which noncitizens who had entered the United States, even if without inspection, were entitled to a custody hearing before an IJ or other hearing officer. In contrast, those who were stopped at the border were only entitled to release on parole. See 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 220 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

43. For decades, long-term residents of the U.S. who entered without inspection, or were otherwise not in legal status, and were subsequently apprehended by ICE in the interior of the country have been detained pursuant to § 1226 and entitled to bond hearings before an IJ, unless barred from doing so due to their criminal history.

44. In July 2025, however, ICE began asserting that all individuals who entered without

inspection should be considered "seeking admission" and therefore subject to mandatory detention under 8 U.S.C. §1225(b)(2)(A).

45. On September 5, 2025, the BIA issued a precedential decision adopting this interpretation, departing from the INA's text, federal precedent, and existing regulations. *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), attached hereto as Exhibit K.

46. Contrary to ICE's assertions, Petitioner is not within the category of individuals to whom *Matter of Yajure Hurtado* applies, because his procedurally regular entry to the United States was an "admission" under *Matter of Quilantan.* 25 I. & N. Dec. at 293. He therefore cannot be detained under §1225(b)(2)(A).

47. Even assuming, *arguendo*, that Petitioner's entry to the U.S. was not a lawful admission, and Respondents' new legal interpretation does apply to him, this interpretation is plainly contrary to the statutory framework and its implementing regulations. Indeed, for decades, Respondents had applied § 1226(a) to people like the Petitioner. Respondents' new policies are thus not only contrary to law, but are arbitrary and capricious in violation of the Administrative Procedure Act ("APA"). *See* 5 U.S.C. §706(2)(A). They were also adopted without complying with the procedural requirements of the APA. 5 U.S.C. §706(2)(D).

48. Numerous federal courts have rejected this interpretation and instead have consistently found that § 1226, not § 1225(b)(2), authorizes detention of noncitizens who entered without inspection and were later apprehended in the interior of the country. *See e.g.*, *Sampiao v. Hyde*, 2025 WL 2607924 (D. Mass. Sept. 9, 2025) (noting court's disagreement with BIA's analysis in *Yajure Hurtado*) *Id*; *Leal-Hernandez v. Noem*, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Lopez Benitez v. Francis*, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Jimenez v. FCI Berlin, Warden*, No. 25-cv-326-LM-AJ (D.N.H. Sept. 8, 2025);

Kostak v. Trump, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Cuevas Guzman v. Andrews*, 2025 WL 2617256, at *3 n.4 (E.D. Cal. Sept. 9, 2025); *see also Lepe v. Andrews*, No. 1:25-cv-01163-KES-SKO (HC) (E.D. Cal. Sept. 23, 2025), attached hereto as Exhibit O, *Lopez v. Hardin*, No. 2:25-cv-830-KCD-NPM (M.D. Fla. Sept. 25, 2025), attached hereto as Exhibit P, and *Chafla v. Scott*, No. 2:25-cv-00437-SDN (D. Maine Sept. 21, 2025) attached here to as Exhibit Q.

49. Pursuant to the Supreme Court's recent decision in *Loper Bright v. Raimondo*, this Court should independently interpret the statute and give the BIA's expansive interpretation of § 1225(b)(2) no weight, as it conflicts with the statute, regulations, and precedent. 603 U.S. 369 (2024).

50. 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. Following IIRIRA, the Executive Office for Immigration Review ("EOIR") issued regulations clarifying that individuals who entered the country without inspection were not considered detained under § 1225, but rather 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) ("Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination").

51. The statutory context and structure also make clear that § 1226 applies to individuals who have not been admitted and entered without inspection. In 2025, Congress added new

mandatory detention grounds to § 1226(c) that apply only to noncitizens who have not been admitted. *See* The Laken Riley Act, Pub. L. No. 119-1, § 2, 139 Stat. 3, 3 (2025) (8 U.S.C. § 1226(c)(1)(E)).

52. By specifically referencing inadmissibility for entry without inspection under 8 U.S.C. § 1182(6)(A), Congress made clear that such individuals are otherwise covered by § 1226(a). Thus, §1226 plainly applies to noncitizens charged as inadmissible, including those present without admission or parole.

53. The Supreme Court has explained that § 1225(b) is concerned "primarily [with those] seeking entry," and is generally imposed "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). In contrast, Section 1226 "authorizes the Government to detain certain aliens *already in the country* pending the outcome of removal proceedings." *Id.* at 289 (emphases added).

54. Furthermore, § 1225(b)(2) specifically applies only to those "seeking admission," and the implementing regulations at 8 C.F.R. § 1.2 address noncitizens who are "coming or attempting to come into the United States." The use of the present progressive tense would exclude noncitizens like Petitioner who are apprehended in the interior years after they entered, as they are no longer "seeking admission" or "coming [...] into the United States." *See Martinez v. Hyde*, 2025 WL 2084238 at *6 (D. Mass. July 24, 2025) (citing the use of present and present progressive tense to support conclusion that INA § 1225(b)(2) does not apply to individuals apprehended in the interior); *see also Al Otro Lado v. McAleenan*, 394 F. Supp. 3d 1168, 1200 (S.D. Cal. 2019) (construing "is arriving" in INA § 235(b)(1)(A)(i) and observing that "[t]he use of the present progressive, like use of the present participle,

denotes an ongoing process").

55. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to Petitioner, who had entered the U.S. approximately 25 years before he was apprehended, and because his procedurally regular entry was an "admission" under *Matter of Quilantan.* 25 I. & N. Dec. at 293.

STATEMENT OF FACTS

56. Petitioner is a citizen of Colombia.

57. Upon information and belief, Petitioner has resided in the U.S. since at least 1999.

58. ICE detained Petitioner on August 13, 2025 in Denver, Colorado.

59. He is now detained at the GEO Contract Detention Center in Aurora, CO. *See* Ice Detainee Locator Results, Exhibit C.

60. Petitioner filed a Motion for Custody Redetermination and Bond on November 03, 2025 and Immigration Judge denied his Motion on November 07, 2025, citing lack of jurisdiction pursuant to *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). *See* Order of the Immigration Judge, Exhibit F.

61. Petitioner is the beneficiary of a pending I-130 Petition for Alien Relative filed by his U.S Citizen son, which was received by USCIS on October 31, 2025. *See* Receipt Notice for I-130 Petition for Alien Relative, Exhibit M. He is eligible to apply for Adjustment of Status under 8 U.S.C. §1255(a), through his son's petition, because he entered the United States in a procedurally regular manner. *Matter of Quilantan*, 25 I&N Dec. 285, 290-91, 293 (BIA 2010).

62. Upon information and belief, Petitioner has never been arrested or charged with any crime.

63. Neither an Immigration Judge, nor the Board of Immigration Appeals will grant Petitioner's bond request, as the IJ has found that his jurisdiction to grant bond has been effectively stripped under *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). See Exhibit K.

64. Petitioner is scheduled for an Individual hearing before the Immigration Court on his I-589 Application for Asylum on November 24, 2025. *See* Notice of Hearing, Exhibit L.

65. If the IJ denies Petitioner's I-589 Application, he may be ordered removed from the United States without the opportunity to apply for Adjustment of Status under 8 U.S.C. §1255(a), through his son's petition.

66. Without relief from this Court, he faces continued detention without release, and potential removal from the United States without the opportunity to seek a form of relief he is eligible for.

COUNT I

Violation of 8 U.S.C. § 1226(a)

Unlawful Denial of Release on Bond

67. Petitioner restates and realleges all paragraphs 1 to 66 as if fully set forth here.

68. Petitioner may be detained, if at all, pursuant to 8 U.S.C. § 1226(a).

69. Petitioner has been denied release on bond contrary to law.

70. Petitioner's continuing detention is therefore unlawful.

COUNT II
Violation of the Bond Regulations, 8 C.F.R. §§ 236.1, 1236.1 and 1003.19 Unlawful Denial of Release on Bond

71. Petitioner restates and realleges paragraphs 1 to 66 as if fully set forth here.

72. 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 "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination." 62 Fed. Reg. at 10323. The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.

73. 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 Fifth Amendment Right to Due Process

74. Petitioner restates and realleges paragraphs 1 to 66 as if fully set forth here.

75. The Fifth Amendment's Due Process Clause prohibits the federal government from depriving any person of "life, liberty, or property, without due process of law." U.S. Const. Amend. V.

76. The Supreme Court has repeatedly emphasized that the Constitution generally requires a hearing before the government deprives a person of liberty or property. *Zinermon v. Burch*, 494 U.S. 113, 127 (1990).

77. Under the *Mathews v. Eldridge* framework, the balance of interests strongly favors Petitioner's release. 424 U.S. 319, 334-35 (1976).

78. Petitioner's private interest in freedom from detention is profound. The interest in being free from physical detention is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004); *see also Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) ("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.").

79. The risk of erroneous deprivation is exceptionally high. Petitioner has never been arrested or charged with any crime and has ties to the community.

80. The government's interest in detaining Petitioner without due process is minimal. Immigration detention is civil, not punitive, and may only be used to prevent danger to the community or ensure appearance at immigration proceedings. *See Zadvydas*, 533 U.S. at 690.

81. Furthermore, the "fiscal and administrative burdens" of providing Petitioner with a bond hearing are minimal, particularly when weighed against the significant liberty interests at stake. *See Mathews*, 424 U.S. at 334–35.

82. Considering these factors, Petitioner respectfully requests that this Court order his immediate release from custody on his own recognizance, or in the alternative, order his release on the bond and conditions the IJ stated that he would have granted if not for *Matter of Yajure Hurtado*. *See* Order of the Immigration Judge, Exhibit E.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court will:

(1) Assume jurisdiction over this matter;

(2) Order that he not be transferred outside of this District;

(3) Issue an Order to Show Cause ordering Respondents to show cause why his Petition should not be granted within three days;

(4) Declare that his detention is unlawful;

(5) Issue a Writ of Habeas Corpus ordering Respondents to release him from custody on his own recognizance, on the bond and conditions the IJ stated that he would have granted if not for *Matter of Yajure Hurtado*, pursuant to 8 U.S.C. § 1226(a) or the Due Process Clause within seven days;

(6) Award him his attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and

(7) Grant him any further relief this Court deems just and proper.

Date: November 19, 2025

Respectfully Submitted,

/S/ Scott Brian Petiya
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Attorney for the Petitioner

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

I, Scott Brian Petiya, hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief under 28 U.S.C. § 2242 or under the U.S. Constitution are true and correct to the best of my knowledge.

Dated this 19th day of November, 2025.

/s/Scott Brian Petiya
Scott Brian Petiya, Esq.