

1 Jonathan Langer (NY 5572359)
2 Law Office of Jonathan Langer, PLLC
260 Madison Ave, 17th Floor
3 New York, NY 10016
Phone: 646.801.9332
4 Email: jonathan@jonathanlangerlaw.com

5 Celina B. Curillo, Esq.*
6 The Law Office of Celina B. Curillo
64 North Street, 2nd Floor
7 Danbury, CT 06810
Phone: (203) 892-4060
8 Email: celina@cbclaw.net

9 **Motion for Pro Hac Vice forthcoming*

10
11 UNITED STATES DISTRICT COURT
12 WESTERN DISTRICT OF NEW YORK

13 WILSON FERNANDO PASATO ZHISHPON,
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Petitioner,

v.

STEPHEN KURZDORFER, Field Office
Director of Enforcement and Removal
Operations, BUFFALO Field Office,
Immigration and Customs Enforcement; Kristi
NOEM, Secretary, U.S. Department of
Homeland Security; U.S. DEPARTMENT OF
HOMELAND SECURITY; Pamela BONDI,
U.S. Attorney General; EXECUTIVE OFFICE
FOR IMMIGRATION REVIEW; MICHAEL
BALL, Warden of BUFFALO FEDERAL
DETENTION FACILITY

Respondents.

Case No.

**PETITION FOR WRIT OF
HABEAS CORPUS**

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INTRODUCTION

1. Petitioner WILSON FERNANDO PASATO ZHISHPON is in the physical custody of Respondents at the BUFFALO DETENTION FACILITY. 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, having entered the United States without admission or inspection. *See* 8 U.S.C. § 1182(a)(6)(A)(i).

3. Based on this allegation in Petitioner’s removal proceedings, DHS denied Petitioner release from immigration custody, consistent with a new DHS policy issued on July 8, 2025, instructing all Immigration and Customs Enforcement (ICE) employees to consider anyone inadmissible under § 1182(a)(6)(A)(i)—i.e., those who entered the United States without admission or inspection—to be 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) does not apply to individuals like Petitioner who previously entered and are now residing in the United States. Instead, such individuals are subject to a different statute, § 1226(a), that allows for release on conditional parole or bond.

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 released
7 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 BUFFALO FEDERAL DETENTION FACILITY.

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 Western District of New York,
19 the 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 Western
23 District of New York.

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REQUIREMENTS OF 28 U.S.C. § 2243

13. 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.*

14. 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

15. Petitioner WILSON FERNANDO PASATO ZHISHPON is alleged to be a citizen of ECUADOR who has been in immigration detention since November 15, 2025. After arresting Petitioner in New York. ICE did not set bond and Petitioner is unable to obtain review of his custody by an IJ, pursuant to the Board’s decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

16. Respondent Stephen Kurzdorfer is the Director of the Buffalo Field Office of ICE’s Enforcement and Removal Operations division. As such, Stephen Kurzdorfer is Petitioner’s immediate custodian and is responsible for Petitioner’s detention and removal. He is named in his official capacity.

1 entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d),
2 while noncitizens who have been arrested, charged with, or convicted of certain crimes are
3 subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

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

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

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

10 27. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the
11 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No.
12 104–208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section
13 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119-1,
14 139 Stat. 3 (2025).

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

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

4 30. On July 8, 2025, ICE, “in coordination with” DOJ, announced a new policy that
5 rejected well-established understanding of the statutory framework and reversed decades of
6 practice.

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

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

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

19 34. Even before ICE or the BIA introduced these nationwide policies, IJs in the
20 Tacoma, Washington, immigration court stopped providing bond hearings for persons who
21 entered the United States without inspection and who have since resided here. There, the U.S.
22 District Court in the Western District of Washington found that such a reading of the INA is
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24 ¹ Available at <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>.

1 likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not
2 apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d
3 1239 (W.D. Wash. 2025).

4 35. Subsequently, court after court has adopted the same reading of the INA's
5 detention authorities and rejected ICE and EOIR's new interpretation. *See, e.g., Gomes v. Hyde*,
6 No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*,
7 No. CV 25-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025);
8 *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11,
9 2025), *report and recommendation adopted*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL
10 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025
11 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE,
12 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-
13 ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-
14 BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH),
15 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-
16 BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-
17 02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-
18 JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051
19 (ECT/DJF), --- F. Supp. 3d ----, 2025 WL 2466670 (D. Minn. Aug. 27, 2025) *Lopez-Campos v.*
20 *Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025);
21 *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3,
22 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D.
23 Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D.
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1 Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass.
2 Sept. 9, 2025); *see also, e.g., Palma Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at *2
3 (D. Neb. Sept. 3, 2025) (noting that “[t]he Court tends to agree” that § 1226(a) and not §
4 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL
5 2402271 at *3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-
6 RCC, 2025 WL 2374224 at *2 (D. Neb. Aug. 14, 2025) (same).

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

10 37. Section 1226(a) applies by default to all persons “pending a decision on whether
11 the [noncitizen] is to be removed from the United States.” These removal hearings are held under
12 § 1229a, to “decid[e] the inadmissibility or deportability of a[] [noncitizen].”

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

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

1 and family needs. Petitioner is also a beloved cousin to their children, with whom he shares a
2 close bond. In addition, he is an active and devoted member of the local community, attending
3 Mass every Sunday at Guadalupe Parish and participating in parish events and volunteer
4 activities. Petitioner's absence is deeply felt by both his family, who rely on his presence and
5 support, and by his faith community, where he is recognized as a dedicated and valued member.

6 46. Petitioner is not a flight risk or community threat and has no criminal record or
7 pattern of criminal behavior.

8 47. Following Petitioner's arrest and transfer to Buffalo Federal Detention Facility
9 ICE issued a custody determination to continue Petitioner's detention without an opportunity to
10 post bond or be released on other conditions.

11 48. Pursuant to *Matter of Yajure Hurtado*, the immigration judge is unable to consider
12 Petitioner's bond request.

13 49. As a result, Petitioner remains in detention. Without relief from this court, he
14 faces the prospect of months, or even years, in immigration custody, separated from his family
15 and community.

16 **CLAIMS FOR RELIEF**

17 **COUNT I**

18 **Violation of the INA**

19 50. Petitioner incorporates by reference the allegations of fact set forth in the
20 preceding paragraphs.

21 51. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all
22 noncitizens residing in the United States who are subject to the grounds of inadmissibility. As
23 relevant here, it does not apply to those who previously entered the country and have been
24 residing in the United States prior to being apprehended and placed in removal proceedings by

1 Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to
2 § 1225(b)(1), § 1226(c), or § 1231.

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

5 **COUNT II**
6 **Violation of the Bond Regulations**

7 53. Petitioner incorporates by reference the allegations of fact set forth in preceding
8 paragraphs.

9 54. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-
10 Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA.
11 Specifically, under the heading of “Apprehension, Custody, and Detention of [Noncitizens],” the
12 agencies explained that “[d]espite being applicants for admission, [noncitizens] who are present
13 without having been admitted or paroled (formerly referred to as [noncitizens] who entered
14 without inspection) will be eligible for bond and bond redetermination.” 62 Fed. Reg. at 10323
15 (emphasis added). The agencies thus made clear that individuals who had entered without
16 inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. §
17 1226 and its implementing regulations.

18 55. Nonetheless, pursuant to *Matter of Yajure Hurtado*, EOIR has a policy and
19 practice of applying § 1225(b)(2) to individual like Petitioner.

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

22 **COUNT III**
23 **Violation of Due Process**

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

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

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

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

11 **PRAYER FOR RELIEF**

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

- 13 a. Assume jurisdiction over this matter;
- 14 b. Order that Petitioner shall not be transferred outside the Western District of New
15 York while this habeas petition is pending;
- 16 c. Issue an Order to Show Cause ordering Respondents to show cause why this
17 Petition should not be granted within three days;
- 18 d. Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner or, in
19 the alternative, provide Petitioner with a bond hearing pursuant to 8 U.S.C. §
20 1226(a) within seven days;
- 21 e. Declare that Petitioner's detention is unlawful;
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- f. 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
- g. Grant any other and further relief that this Court deems just and proper.

DATED November 19, 2025.

/s/Jonathan Langer

Jonathan Langer (NY 5572359)
Law Office of Jonathan Langer, PLLC
260 Madison Ave, 17th Floor
New York, NY 10016
Phone: 646.801.9332
Email: jonathan@jonathanlangerlaw.com

Celina B. Curillo, Esq.*
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Attorneys for Petitioner

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**VERIFICATION BY SOMEONE ACTING ON PETITIONERS' BEHALF PURSUANT
TO 28 U.S.C. § 2242**

I am submitting this verification on behalf of the Petitioner because I am the attorney for
Petitioner. I hereby verify that the statements made in the attached Petition for Writ of Habeas
Corpus are true and correct to the best of my knowledge.

Dated: November 19, 2025

Respectfully submitted,

/s/
Celina B. Curillo, Esq.*
The Law Office of Celina B. Curillo
64 North Street, 2nd Floor
Danbury, CT 06810
Phone: (203) 892-4060
Email: celina@cbclaw.net

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