UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

FAVIO NELSON SUAREZ POLANIA,

Petitioner,

v.

Case No: 25-CV-6739

PHILIP L. RHONEY, in his official capacity as Acting ICE Deputy Field Office Director, KRISTI NOEM, in her official capacity as Secretary of Homeland Security, TODD M. LYONS, in his official capacity as Acting Director of Immigration and Customs Enforcement, and PAMELA BONDI, in her official capacity as Attorney General of the United States,

Respondents.

VERIFIED PETITION FOR A WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner Favio Nelson Suarez Polania ("Petitioner" or "Mr. Suarez Polania") challenges here his unlawful detention by Immigration and Customs Enforcement ("ICE") at the Buffalo Federal Detention Facility in Batavia, New York.

2. Petitioner has resided in the United States since September 17, 2023, with his wife and their three children (two step-children and one biological child). Petitioner is neither a danger to the community nor a flight risk. ICE previously found that Petitioner was neither a danger to the community nor a flight risk when it released Petitioner and his family from custody on September 20, 2023, pursuant to an Order of Release on Recognizance.

3. Since his release, Petitioner has abided by the terms of that Order. Nevertheless, on November 13, 2025, ICE detained him at a previously scheduled check-in appointment without

explanation or any prior notice or opportunity to be heard. Petitioner has been detained in ICE custody since that time.

4. Respondent's actions violate the Due Process Clause of the Fifth Amendment to the U.S. Constitution, the Immigration and Nationality Act and implementing regulations, and the Administrative Procedure Act.

5. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be immediately released from custody. In the alternative, Petitioner seeks a bond hearing under 8 U.S.C. §1226(a) within seven days, at which the government bears the burden to show by clear and convincing evidence that Petitioner is a danger or flight risk and that no alternatives to detention could mitigate the risk of danger or flight.

CUSTODY

6. At the time of the filing of this petition, Petitioner is physically detained at the Buffalo Federal Detention Facility in Batavia, New York. He is in physical custody of Joseph E Freden, who is in charge of the BFDF. Mr. Freden and his agents have direct control of Petitioner. The other Respondents have some level of legal control over Petitioner and authority to detain or release him now and in the future and/or have discretionary control over his current applications.

JURISDICTION

7. This action arises under the United States Constitution and the ("INA"), 8 U.S.C. § 1101 et. seq., as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Pub. L. No. 104-208, 110 Stat. 1570. This Court has jurisdiction under 28 U.S.C. § 2241, art. I, § 9, cl. 2 of the United States Constitution ("Suspension Clause") and 28 U.S.C. §

1331, as Petitioner is presently in custody under color of authority of the United States and such custody is in violation of the U.S. Constitution, laws, or treaties of the United States. This Court may grant relief pursuant to 28 U.S.C. § 2241, and the All Writs Act, 28 U.S.C. § 1651.

VENUE

8. Venue lies in the United States District Court for the Western District of New York, the judicial district where Petitioner is detained and where a substantial part of the events or omissions giving rise to this claim occurred. 28 U.S.C. § 1391(e).

PARTIES

9. Petitioner is a national and citizen of Colombia and is currently detained by the Respondents at the Buffalo Federal Detention Facility in Batavia, New York. Upon information and belief, he has been in ICE custody since November 13, 2025.

10. Respondent, Philip L. Rhoney, is the Acting ICE Deputy Field Office Director and is the senior ICE officer in charge of the BFDF in Batavia, New York. He is Petitioner Mr. Suarez Polania's immediate custodian, and, upon information and belief, resides in the Western District of New York.

11. Kristi Noem is the Secretary of Homeland Security and is the senior official responsible for supervising all activities within the Department of Homeland Security ("DHS"), including immigration activities. She is a legal custodian of Petitioner and is named in her official capacity.

12. Upon information and belief, Respondent Todd M. Lyons is the Acting Director of ICE. He is a legal custodian of Petitioner and is named in his official capacity.

13. Respondent Pam Bondi is sued in her official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice (DOJ). In that capacity, she has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the Board of Immigration Appeals.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

14. Petitioner is not required to exhaust his administrative remedies in this matter because his available remedies provide no genuine opportunity for adequate relief as any attempt to seek administrative remedy would be futile, she would face irreparable injury without immediate judicial relief, and her case raises a substantial constitutional question. *Blandon v. Barr*, 434 F. Supp. 3d 30, 37 (W.D.N.Y. 2020).

15. Petitioner's Notice to Appear (NTA) dated September 20, 2023 lists him as "an alien present in the United States who has not been admitted or paroled." Respondents have recently upended years or established practice and statutory interpretation and now claim that all noncitizens, like Petitioner, who entered the United States without admission or parole are considered seeking admission and are therefore statutorily ineligible for a bond under 8 U.S.C. §1225(b)(2)(A). *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025); *see also Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025).

16. Therefore, Respondents continue to hold the Petitioner in custody pursuant to 8 U.S.C. §1225(b)(2)(A) and the only administrative remedy available to him is to request parole from ICE custody. Given that ICE is the same agency that is detaining him, this remedy provides no genuine opportunity for relief.

17. Finally, Petitioner's case raises a substantial constitutional question as to the revocation of his Order of Release on Recognizance and re-detention with explanation, notice, or the opportunity to be heard.

STATEMENT OF FACTS

18. Petitioner Mr. Suarez Polania has resided in the United States since September 2023 with his wife and three children. They live in Plattsburgh, New York.

19. After Petitioner's arrival in the United States on September 17, 2023, he was served with a Notice to Appear, dated September 20, 2023, in which he was identified as "an alien present in the United States who has not been admitted or paroled." *See* **Exhibit A**. ICE charged Petitioner with being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as someone who entered the United States without inspection. *See* **Exhibit A**. However, DHS did not file this NTA with the Immigration Court and therefore, formal removal proceedings against Petitioner were not initiated.

20. While Petitioner and the other members of his family were initially detained by DHS, they were released from custody on September 20, 2023, pursuant to an Order of Release on Recognizance. *See* **Exhibit B**. That Order specifically indicated that the DHS' detention and release of the Petitioner were governed by 8 U.S.C. § 1226. *See* **Exhibit B**.

21. After his release from custody on the Order of Release on Recognizance, Petitioner complied with all the terms of the Order. Since that time, there has been no change in circumstances that would give rise to any suggestion that Petitioner is a flight risk or danger to the community.

22. Petitioner and his family then filed an affirmative Form I-589 Application for Asylum, which was received by USCIS on February 10, 2024. *See* **Exhibit C**. That application remains pending and has not yet been scheduled for an interview with the USCIS Asylum Office.

23. On November 4, 2025, ICE mailed Call-In Letters to Petitioner and his family ordering them to appear at the ICE office in Champlain, NY on November 13, 2025 at 8:00am. *See* **Exhibit D**. The letter claimed that the reason for the appointment was the "Issuance of new court documents." *See* **Exhibit D**. The letter was signed by ICE Deportation Officer Eric Seidel. *See* **Exhibit D.**

24. However, upon arrival at the Champlain ICE office on November 13, the real reason for the appointment became immediately apparent. The first ICE officer that Petitioner and his family spoke with told them that the whole family was going to be detained.

25. Petitioner asked the ICE officer what was happening and why he was being detained but was given no explanation for his detention or the revocation of his Order of Release on Recognizance.

26. Although ICE continued to process Petitioner for detention and separated him from his family, his wife and children were released, once again pursuant to an Order of Release on Recognizance. *See* **Exhibit E**. And once again, this new Order of Release on Recognizance specifically indicated that the DHS' detention and release of the Petitioner's wife and children was governed by 8 U.S.C. § 1226, not 8 U.S.C. § 1225. *See* **Exhibit E**.

27. Following his arrest, ICE transferred Petitioner to the Buffalo Federal Detention Facility in Batavia, New York, where he is currently detained.

28. At no time since Petitioner's detention on November 13, 2025 has ICE given him any explanation for why it revoked his Order of Release on Recognizance or given him an opportunity to respond to those reasons.

29. There is every indication that Petitioner remains neither a flight risk nor a danger to the community, just as he was on September 20, 2023, when ICE came to that same conclusion and released him on an Order of Release on Recognizance.

30. Petitioner and his family have now been living in the United States for more than two years. For most of that time, they have resided in Plattsburgh, NY. Both he and his wife have work authorization and their kids are all enrolled in schools in Plattsburgh.

31. Since receiving his employment authorization in August 2024, Petitioner has been working to financially support himself and his family. At the time of his detention, he was working on a dairy farm, operating heavy machinery.

32. Although Petitioner's NTA was not filed with the Immigration Court after his release on September 20, 2023, the NTA for his 13-year-old step-daughter was filed with the Immigration Court. Petitioner and his wife have been dutifully attending those hearings with their daughter and ensuring that she appears where and when requested by the Immigration Court.

33. When requested to report to ICE on November 13, 2025, Petitioner and his wife and children appeared as required.

34. Petitioner's sister and his sister-in-law are both United States citizens.

35. Petitioner has no criminal history and has never been in trouble with the law, either in the United States or anywhere in the world.

LEGAL FRAMEWORK

I. PETITIONER IS DETAINED UNDER 8 U.S.C. § 1226(a) AND ELIGIBLE FOR A BOND HEARING.

A. Legal framework governing detention of non-citizens

36. Two sections of the Immigration and Nationality Act govern the detention of non-citizens who have not received a final order of removal: 8 U.S.C. § 1225 and 8 U.S.C. § 1226.

37. First, non-citizens detained under 8 U.S.C. §1226 are classified under one of two subsections: 8 U.S.C. § 1226(a) and 8 U.S.C. § 1226(c).

38. "Section 1226(a) governs a separate non-mandatory detention scheme and provides for the 'default rule' for detaining and removing aliens 'already present in the United States.'" *J.U.*, 2025 U.S. Dist. LEXIS 191630, at *14 quoting *Jennings*, 583 U.S. at 303. Non-citizens detained under this subsection are entitled to a bond hearing before an immigration judge. 8 U.S.C. §1226(a).

39. 8 U.S.C §1226(c) provides that non-citizens in removal proceedings who have certain criminal convictions are subject to mandatory detention. 8 U.S.C. §1226(c). While these non-citizens are generally presumed to be ineligible for a bond hearing, they can still petition Federal Courts for a writ of habeas corpus for prolonged detention in violation of the Due Process Clause of the Fifth Amendment. A federal judge can then order a bond hearing with the burden on the government to show by clear and convincing evidence that the individual is a danger to persons or property or a flight risk. *See Black v. Dir. Thomas Decker*, 103 F.4th 133 (2d Cir. 2024); *Cantor v. Freden*, 761 F. Supp. 3d 630, 635-41 (W.D.N.Y. 2025).

40. Second, non-citizens detained under 8 U.S.C. § 1225 are similarly divided into two categories.

41. 8 U.S.C § 1225(b)(1) provides for mandatory detention of "arriving aliens" and noncitizens subject to expedited removal. 8 U.S.C §1225(b)(2) governs those who are considered "applicants for admission."

42. For decades following the enactment of these provisions, those declared present in the United States, later arrested, and placed in standard removal proceedings (removal proceedings pursuant to 8 U.S.C. 1229(a)), were considered detained under 8 U.S.C 1226(a) and eligible for a bond hearing before an immigration judge, unless their criminal history subjected them to mandatory detention under 8 U.S.C. 1226(c). See e.g., *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) (discussing Section 1226(a) as the "default rule" for detaining noncitizens "already present in the United States"); *Miranda v. Garland*, 34 F.4th 338, 346 (4th Cir. 2022) (same); *Leal-Hernandez v. Noem*, No. 1:25-CV-02428-JRR, 2025 WL 2430025, at *9 (D. Md. Aug. 24, 2025) ("Since at least 1996, the INA has mandated the detention of arriving aliens and certain criminal non-citizens detained in the United States. The Board of Immigration Appeals has long held to this interpretation. For everyone else, 8 U.S.C. § 1226(a) provides DHS the discretion to detain noncitizens, subject to review during a custody hearing before an immigration judge."); *Hasan v. Crawford*, No. 1:25-CV-1408 (LMB/IDD), 2025 WL 2682255, at *9 (E.D. Va. Sept. 19, 2025) ("Before July 8, 2025, 'DHS's long-standing interpretation has been that § 1226(a) applie[d] to those who have crossed the border between ports of entry and are shortly thereafter apprehended.'") (quoting Transcript of Oral Argument at 44:24–45:2, *Biden v. Texas*, 597 U.S. 785 (2022)).

43. In recent months, however, Respondents have adopted an entirely new interpretation of the statute and now claim that all noncitizens who entered the United States without admission or parole are considered seeking admission and therefore ineligible for a bond.

Matter of Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025); *see also Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025).

B. Petitioner is detained under 8 U.S.C. 1226(a) and eligible for a bond hearing.

44. Petitioner entered the U.S. in September 2023. And DHS issued him an NTA which marked him as "an alien present in the United States who has not been admitted or paroled." *See* **Exhibit A**.

45. Petitioner has never been subject to expedited removal and has not been designated an arriving alien. *See* **Exhibits A and B**; 8 U.S.C. §1232(a)(5)(D). He has no criminal record and is therefore not subject to 8 U.S.C. 1226(c). Therefore, the only possible statute for him to fall under is 8 U.S.C. 1226(a).

46. To the extent that Respondents argue that he is detained under 8 U.S.C. § 1225(b) and seeking admission pursuant to *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), this argument fails.

47. The Board's reversal of historical practice and newly revised interpretation of the detention statutes are not entitled to any deference. *See Loper Bright Ent. v. Raimondo*, 603 U.S. 369, 412-13 (2024). Numerous courts around the country have rejected the reasoning in *Yajure Hurtado* and held that those who have been designated as "present" in the United States are classified under 8 U.S.C. § 1226(a) and are, at a minimum, entitled to a bond hearing before an immigration judge. *J.U.*, 2025 U.S. Dist. LEXIS 191630, at *22-24. *Artiga*, 2025 U.S. Dist. LEXIS 196847, at *15-24; *Orellana v. Moniz*, Civil Action No. 25-cv-12664-PBS, 2025 U.S. Dist. LEXIS 196282, at *13-14 (D. Mass. Oct. 3, 2025) (collecting cases). Furthermore, the government's policy in *Yajure Hurtado* renders other statutes, e.g., 8 U.S.C. § 1226(c) generally, and the Laken Riley Act, superfluous. *J.U.*, 2025 U.S. Dist. LEXIS 191630, at *22-24.

48. In addition, Chief Judge Wolford, Judge Vilardo, Judge Vacca, and Judge Geraci from the Western District of New York have joined numerous courts in the Second Circuit and around this country in rejecting the Respondents' re-interpretation of these detention provisions because it goes against "the plain language of the statute, the legislative history, and traditional canons of statutory interpretation." *Astudillo v. Hyde*, No. 25-551-JJM, 2025 U.S. Dist. LEXIS 214063, at *7 (D.R.I. Oct. 30, 2025) (internal citations and quotations omitted); *see e.g., Andrade Lozano v. Hyde, et al.* 6:25-cv-06528-MAV, Dkt. No. 20 (October 17, 2025); *Ortiz*, 2025 U.S. Dist. LEXIS 217654, at *3 (W.D.N.Y. Nov. 4, 2025) (rejecting *Yajure Hurtado* and collecting cases of courts rejecting the holding of *Yajure Hurtado*); *Quituizaca Quituisaca v. Bondi, et al.*, 6:25-cv-06527-EAW, at Dkt. No. 15 (W.D.N.Y. Nov. 12, 2025); *Mendoza v. Bondi*, et al., 1:25-cv-954-EAW, at Dkt. No. 15 (W.D.N.Y. Nov. 12, 2025); *Najeem v. Bondi*, 6:25-cv-06584-EAW, at Dkt. No. 6 (W.D.N.Y. Nov. 12, 2025).

49. Accordingly, Petitioner is subject to discretionary detention under 8 U.S.C. §1226(a) based on his NTA and the plain text of the statute.

50. As a person detained under 8 U.S.C. § 1226(a), Petitioner must, upon his request, receive a custody redetermination hearing (colloquially called a "bond hearing") with strong procedural protections. 8 C.F.R. 236.1(d) & 1003.19(a)-(f).

51. Therefore, Petitioner respectfully requests a bond hearing with the burden on the government to prove by clear and convincing evidence that he is a danger to the public or property and a flight risk and to likewise demonstrate by clear and convincing evidence that no alternatives to detention can mitigate the risk of flight or danger. *Cantor v. Freden*, 761 F. Supp. 3d 630, 635-41 (W.D.N.Y. 2025).

CLAIMS FOR RELIEF

COUNT ONE

VIOLATION OF IMMIGRATION AND NATIONALITY ACT, 8 U.S.C. § 1226(a) (Bond Hearing Under 8 U.S.C. § 1226(a))

52. Petitioner re-alleges and incorporates by reference each and every allegation contained above.

53. Petitioner is detained under 8 U.S.C. § 1226(a).

54. Petitioner has not been, and will not be, provided with a bond hearing as required by law due to current DHS policy.

55. Petitioner's continued detention without the ability to obtain a bond hearing is therefore unlawful.

56. Because Petitioner is detained under 8 U.S.C. § 1226(a), under the Due Process Clause of the Fifth Amendment to the United States Constitution, 8 U.S.C. § 1226(a), and 8 C.F.R. 236.1(d) & 1003.19(a)-(f), Petitioner is entitled to receive a bond hearing before an immigration judge with strong procedural protections.

57. Therefore, if the Court does not release Petitioner outright, Petitioner requests a court order that she is entitled to a bond hearing in front of an immigration judge with the burden on the government to prove by clear and convincing evidence that he is a danger to the public or property and a flight risk and to likewise demonstrate by clear and convincing evidence that no alternatives to detention can mitigate the risk of flight or danger or on conditions the Court deems just and proper. *See Cantor v. Freden*, 761 F. Supp. 3d 630, 635-41 (W.D.N.Y. 2025).

CLAIMS FOR RELIEF

COUNT TWO

VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE U.S. CONSTITUTION

58. Petitioner re-alleges and incorporates by reference each and every allegation contained above.

59. The Due Process Clause of the Fifth Amendment protects all "person[s]" from deprivation of liberty "without due process of law." U.S. CONST AMEND. V.

60. Petitioner received an Order releasing him on his own recognizance.

61. At the bottom of that order, it states that DHS is allowed to cancel this order either because Petitioner has failed to abide by the conditions of the order or for removal.

62. DHS detained him without stating or making an individualized determination that he was either a flight risk or a danger to persons or property.

63. In addition, Respondents seek to deprive him of a bond hearing under 1226(a) by claiming that he is detained under 8 U.S.C. 1225(b).

64. Petitioner respectfully requests that the Court remedy these two violations of the 5th Amendment Due Process Clause by his immediate release, or in the alternative, a bond hearing a bond hearing before an immigration judge in which the burden is on the government to show by clear and convincing evidence that Petitioner is a danger or flight risk and that no alternatives to detention could mitigate the risk of danger or flight.

PRAYER FOR RELIEF

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

1. Assume jurisdiction over this matter;

2. Issue an order barring respondents from transferring Petitioner from the geographic jurisdiction of the Western District of New York while these proceedings are pending to allow his attorneys to readily communicate with her, including meeting with her in person.

3. Issue an order or orders requiring the following:

   a. Declare his arrest and detention to be unlawful;

   b. Order Petitioner's immediate release from custody, or, in the alternative, order a bond hearing before an immigration judge in which the burden is on the government to show by clear and convincing evidence that Petitioner is a danger or flight risk and that no alternatives to detention could mitigate the risk of danger or flight; and

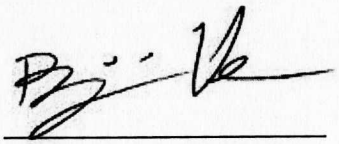
   c. Prohibit Petitioner's re-detention without leave of this Court, which this Court will not grant unless and until the government demonstrates that Petitioner has received a meaningful opportunity to be heard and that all statutory, regulatory, and constitutional due process requirements have been met.

4. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and

5. Grant any other relief which this Court deems just and proper.

DATED: December 8, /2025
Syracuse, New York

Respectfully submitted,



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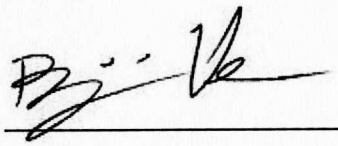
28 U.S.C. § 2242 VERIFICATION STATEMENT

I submit this verification on behalf of Petitioner because I am one of Petitioner's attorneys. I verify that the statements made in this Verified Petition for a Writ of Habeas Corpus are true and correct to the best of my knowledge.

DATED: December 8, 2025
Syracuse, New York



Benjamin Vernon, Esq.