

**CRISTIAN YOBERLIN VASQUEZ
FUENTES**

Philadelphia Federal Detention Center
700 Arch Street
Philadelphia, PA 19106

Petitioner,

v.

J. L. JAMISON, Warden,
Philadelphia Federal Detention Center
700 Arch Street
Philadelphia, PA 19106

DAVID O'NEILL, Acting Field Office
Director of Enforcement and Removal
Operations, Philadelphia Field Office,
Immigration and Customs Enforcement
114 N 8th Street
Philadelphia, PA 19107

KRISTI NOEM, Secretary of the U.S.
Department
Homeland Security
MS 0525 Department of Homeland Security
2707 Martin Luther King, Jr. Ave, SE
Washington, DC 20528-0525

and

PAM BONDI,
Attorney General of the United States,
950 Pennsylvania Avenue, NW
Washington DC 20530

in their official capacities,

Respondents.

Civil Action No.: _____
**PETITION FOR WRIT OF
HABEAS CORPUS
AND INJUNCTIVE RELIEF**

**ORAL ARGUMENT
REQUESTED**

INTRODUCTION

1. Petitioner, Cristian Yoberlin Vasquez Fuentes, currently detained by U.S. Immigration & Customs Enforcement at the Philadelphia Federal Detention Center in Philadelphia, Pennsylvania, files this petition for a writ of habeas corpus.
2. Petitioner is a 23-year-old citizen of Guatemala. Petitioner was born on  in Guatemala.
3. Petitioner files this petition for writ of habeas corpus so that he may be afforded a bond hearing under 8 U.S.C § 1226(a).
4. On or around February 2022, Petitioner entered the United States without inspection and has not departed the U.S. since his arrival.
5. Petitioner had been residing in Bensalem, PA with his uncle since his arrival to the United States. On information and belief, Petitioner has no criminal contacts in the United States and has been an active member of his community and church.
6. On December 12, 2025, in Bensalem, Pennsylvania, Petitioner was detained by ICE officers. Petitioner was on his way to work early in the morning when approached and detained by ICE officers.
7. Petitioner was taken off the street unexpectedly and without cause and DHS is subjecting him to mandatory detention because he entered without inspection. The BIA recently ruled in *Matter of Yajure-Hurtado*, 9 I&N Dec. 216, 225 (BIA 2025) that Immigration Judges do not have jurisdiction to hear bond hearings for individuals who entered without inspection (“EWI”).
8. ICE did not provide an administrative warrant for Petitioner’s arrest at the time he was detained. Petitioner has no criminal record and has been abiding by the laws since his entry into the U.S.

9. Petitioner is detained indefinitely under 8 U.S.C § 1226(a) and is unlawfully being held without the opportunity of having a bond hearing.

SUBJECT MATTER JURISDICTION

10. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*
11. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).
12. 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.*, and the All Writs Act, 28 U.S.C. § 1651.
13. Federal Courts have jurisdiction to hear habeas claims by non-citizens challenging the lawfulness of their detention. *See, e.g., Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

EXHUACTION

14. Habeas petitions typically require exhaustion of administrative remedies but petitions that focus solely on statutory construction do not require exhaustion. *Moscato v. Fed. Bureau of Prisons*, 98 F.3d 757, 760 (3rd Cir. 1996); *Vasquez v. Strada*, 684 F.3d 431, 433-34 (3rd Cir. 2012).
15. The issue presented in this habeas petition is whether Petitioner is detained under 8 U.S.C. § 1226(a) and whether he is entitled to a bond hearing. This requires statutory interpretation of 8 U.S.C. § 1225(b) and 8 U.S.C. § 1226(a), making exhaustion inappropriate.

16. Furthermore, the BIA has predetermined the present statutory issue, making exhaustion moot and futile. *See Cantu-Cortes v. O'Neill*, No. 25-6338, 2025 WL 317639 (E.D. Pa. Nov. 13, 2025) (explaining that “the Board of Immigration Appeals would be bound by its own precedent to determine that Petitioner’s detention is mandatory under 8 U.S.C. § 1225(b)(2). Exhaustion “is likewise not required when it would be futile.” *Stokes v. Warden of FCI-Allenwood*, No. 1:24-CV-1048, 2024 WL 4567287 at *2 (M.D. Pa. Oct 24, 2024) (citing *Rose v. Lundy*, 455 U.S. 509, 516 n.7 (1982)). Petitioner would still need to file this petition even if he were to ask for a bond hearing and file an appeal to the BIA. The BIA is bound by their recent precedent which precludes Immigration Judges from hearing Petitioners bond hearing.
17. Thus, exhaustion is not required. *See del Cid v. Bondi*, No. 25-304, 2025 WL 2985150, at *13 (W.D. Pa. Oct. 23, 2025) (where the Court held that exhaustion was not required when the case “hinge[d] almost entirely on statutory construction” and this Court determined that exhaustion would be futile given the BIA’s recent decision on the present issue). *See also Demirel v. Federal Detention Center Philadelphia*, No. 2:25-CV-05488, at 6-7 (E.D. Pa. Nov. 18, 2025) (where this Court held that exhaustion was not required because the habeas claim hinged on statutory interpretation of INA § 235 and § 236 and exhaustion would have been futile given the BIA’s recent decisions).

VENUE

18. Venue is proper in the United States District Court for the Eastern District of Pennsylvania, in that this is an action against officers and agencies of the United States in their official capacities and brought in a district while Petitioner is detained by Respondents, and no real property is involved in the action. See 28 U.S.C § 1391(e)(1).

Petitioner is detained at the Philadelphia Federal Detention center in Philadelphia, Pennsylvania which is within the jurisdiction of this District.

REQUIREMENTS OF 28 U.S.C. § 2243

19. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the respondents “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause 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.* (emphasis added).
20. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as “perhaps the most important writ known to the constitutional law of England, 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).

PARTIES

21. Petitioner Cristian Yoberlin Vasquez Fuentes is a citizen of Guatemala currently detained by U.S. Immigration & Customs Enforcement at the Philadelphia Federal Detention Center in Philadelphia, Pennsylvania. He is in custody and under the direct control of Respondents and their agents.
22. Respondent J.L. Jamison is sued in his official capacity as the Warden of the Philadelphia Federal Detention Center, a facility which has contracted with U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement Detention. Respondent Jamison is a legal custodian of Petitioner and has the authority to release him.
23. Respondent David O’Neill is sued in her official capacity as the Acting Field Office

Director of Enforcement and Removal Operations, Philadelphia Field Office, Immigration and Customs Enforcement. In this capacity, Respondent O'Neill is responsible for the implementation and enforcement of the Immigration and Nationality Act and oversees the Philadelphia Field Office of the U.S. Immigration and Customs Enforcement, the component agency responsible for Petitioner's detention and custody. Respondent O'Neill is a legal custodian of Petitioner.

24. Respondent Kristi Noem is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security (DHS). In this capacity, Respondent Noem is responsible for the implementation and enforcement of the Immigration and Nationality Act and oversees U.S. Immigration and Customs Enforcement the component agency responsible for Petitioner's detention and custody. Respondent Noem is a legal custodian of Petitioner.
25. 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 BIA. Respondent Bondi is a legal custodian of Petitioner.

STATEMENT OF FACTS

26. Petitioner is a 23-year-old citizen of Guatemala currently detained at Philadelphia Federal Detention Center by Respondents.
27. Petitioner crossed the border without inspection over three years ago.
28. Petitioner is not now and has never been in expedited removal proceedings under 8 C.F.R. §235.3/INA § 235(b)(1). As a result, Petitioner is currently or will be placed in

INA § 240 removal proceedings.

29. Petitioner is not a flight risk, and he does not have a criminal record. Petitioner resides with his uncle, has held the same stable employment since 2023, and is an active member of his community and church.
30. Petitioner was detained and remains in detention without Due Process in violation of his Fifth Amendment rights under the U.S. Constitution. U.S. Const. amend. V. The Due Process Clause of the Fifth Amendment states that no person shall be “deprived of life, liberty, or property, without due process of law.” U.S. Const. amend. V.
31. Petitioner was simply going to work when he was suddenly stopped and unexpectedly detained by ICE. He was not detained at an ICE appointment or at a court hearing.

LEGAL FRAMEWORK

32. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.
33. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an Immigration Judge. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).
34. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under § 1225(b)(2).
35. Lastly, the INA provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)-(b).

36. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).
37. Following the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, EOIR drafted new regulations explain 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).
38. Thus, in the decades that followed, most people who entered without inspection and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed “arriving” were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply “restates” the detention authority previously found at § 1252(a)).
39. On July 8, 2025, ICE, “in coordination with” the DOJ, announced a new policy that rejected well-established understanding of the statutory framework and reversed decades of practice.
40. The new policy, entitled “Interim Guidance Regarding Detention Authority for Applicants for Admission,” claims that all persons who entered the United States without inspection shall now be subject to the mandatory detention provision under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended and affects those who have resided in the United States for months, years, and even decades.

41. District Courts across the nation have been presented with this same issue. As laid out in *Demirel v. Federal Detention Center Philadelphia*, “there are 288 district court decision addressing this issue. In all but six, the Government’s interpretation of the INA—the same interpretation it urges here—was rejected. I have set out all 288 decisions in the Appendix to this Memorandum. I agree with the reasoning in the 282 decisions.” *Demirel v. Federal Detention Center Philadelphia*, No. 2:25-CV-05488, at 1 (E.D. Pa. Nov. 18, 2025).
42. The Supreme Court of the United States previously clarified that “aliens already in the country pending the outcome of removal proceedings” may be detained pursuant to § 1226(a). *Demirel v. Federal Detention Center Philadelphia*, No. 2:25-CV-05488, at 8 (E.D. Pa. Nov. 18, 2025), quoting *Jennings v. Rodrigues*, 583 U.S. at 289 (2018).
43. Individuals detained pursuant to 8 U.S.C. § 1226, “may be arrested and detained pending a decision on whether the alien is to be removed from the United States . . . and pending such decision, the Attorney General (1) may continue to detain the arrested alien; and (2) may release the alien on (A) bond of at least \$1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or (B) conditional parole.” 8 U.S.C. § 1226(a).
44. The title of 8 U.S.C. § 1226 is, “Apprehension and detention of aliens” and relates to foreign nationals being detained while their removal proceedings pend. 8 U.S.C. § 1226.
45. Petitioner is being held under 8 U.S.C. § 1226. Petitioner was not seeking to be admitted upon his detention. He is currently detained pursuant to 8 U.S.C. § 1226 and is entitled to a bond hearing before a neutral adjudicator. See *Demirel v. Federal Detention Center Philadelphia*, No. 2:25-CV-05488 (E.D. Pa. Nov. 18, 2025) (where District Judge Diamond reasoned that Petitioner who entered in 2023 and was apprehended at the border was

detained pursuant to § 1226 after being arrested for a DUI because he was not actively “seeking admission” at the time of his DUI in 2025), *Kashranov v. Jamison*, No. 25-05555, 2025 WL 3188399 (E.D. Pa. Nov. 14, 2025) (where Petitioner was found to be detained pursuant to § 1226 because despite entering without inspection and encountering ICE upon his arrival in 2023, he was detained nearly two years later while in removal proceedings thus Petitioner was not “seeking admission” at the time of his detention), *Cantu-Cortes v. O’Neill*, No. 25-6338, 2025 317639 (E.D. Pa. Nov. 13, 2025) (where this Court reasoned that Petitioner was not seeking to be admitted to the U.S. when he was detained after living in the U.S. for over two decades).

46. The title of 8 U.S.C. § 1225 is “Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing” and 8 U.S.C. § 1225(b) specifically titled, “Inspection of applicants for admission.” of 8 U.S.C. § 1225. 8 U.S.C. § 1225(b) applies to individuals who are arriving to the United States for admission and have been inspected at a port of entry. 8 U.S.C. § 1225(b). Individuals placed in expedited removal proceedings under INA § 235 are subjected to mandatory detention. *See Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019).

47. Given that Petitioner is not subject to expedited removal and is not an arriving alien, Petitioner is not detained pursuant to § 1225 and District Courts have previously explained that “the Supreme Court has tethered § 1225 to ‘the Nation’s borders and ports of entry,’ noting that [foreign nationals] detained pursuant to those provisions are typically detained during removal proceedings.” *del Cid v. Bondi*, No. 25-00304, 2025 WL 2985150 (W.D. Pa. Oct. 23, 2025), quoting *Jennings v. Rodrigues*, 583 U.S. at 287-288 (2018).

48. 8 U.S.C. § 1225(b) is closely tethered to the border and the detention at issue arises several years after Petitioner's arrival to the U.S. At the time of Petitioner's detention, he was not presently at or anywhere near a port of entry. He was in Bensalem, PA, on his way to work, and had been in the United States for over 4 years.
49. The distinction between 8 U.S.C. § 1225(b) and 8 U.S.C. § 1226(a) is clear and if 8 U.S.C. § 1225(b) is interpreted to mean what the BIA contends it does, it would make 8 U.S.C. § 1226(a) moot. However, 8 U.S.C. § 1226(a) was written for a reason and it was to give individuals who fall into 8 U.S.C. § 1226(a) detention bond.

Recent BIA Decisions

50. Under the Board of Immigration Appeals ("BIA") recent rulings, Petitioner is ineligible for bond.
51. The BIA held in *Matter of Q. Li*, that "[a]n applicant for admission who is arrested and detained without a warrant while arriving in the United States, whether or not as a port of entry, and subsequently placed in removal proceedings is detained under section 235(b) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1225(b) (2018), and is ineligible for any subsequent release on bond under section 236(a) of the INA, 8 U.S.C. § 1226(a) (2018)." *Matter of Q. Li*, 29 I&N Dec. 66, 66 (BIA 2025). This decision is overreaching and incorrectly interprets the INA.
52. Petitioner was not seeking admission to the U.S. or arriving to the U.S. at the time of his detention in Bensalem, PA. He had already been present in the U.S. for a number of years at the time of his detention and he was apprehended while on his way to work, certainly not while seeking admission to the U.S.

53. In *Matter of Yajure-Hurtado* the BIA incorrectly affirmed the decision that Immigration Judges “lack authority to hear bond requests or to grant bond to aliens . . . who are present in the United States without admission.” *Matter of Yajure-Hurtado*, 29 I&N Dec. 216, 225 (BIA 2025).
54. According to *Matter of Yajure-Hurtado*, Petitioner entered without inspection and thus an Immigration Judge would lack authority to both hear his bond request or grant it. *Id.* As a result of recent BIA decisions, Petitioner is unlawfully and indefinitely being held without bond.
55. Petitioner entered without inspection. He was then detained over three years after his arrival to the United States and is being held under INA § 236(a)/ 8 U.S.C. § 1226(a). He should be afforded the opportunity to have his bond hearing heard by a neutral adjudicator.
56. Both *Matter of Q. Li* and *Matter of Yajure-Hurtado* improperly expand the scope of detention without recourse to bond for individuals who are no longer at or near the border and who have established a presence within the United States.
57. These recent decisions by the BIA starkly contrast the need for the Laken Riley Act that was signed into law in January 2025. There would have been no need for the Laken Riley act if anyone who entered EWI and those categorized as applicants for admission are not afforded a bond hearing. This Court in *Demirel* explained that “if all [foreign nationals] here illegally are already subject to mandatory detention under § 1225(b), then the Laken Riley Act’s recent expansion of mandatory detention under § 1226(c)(1)(E) would also be beside the point.” *Demirel v. Federal Detention Center Philadelphia*, No. 2:25-CV-05488, at 9 (E.D. Pa. Nov. 18, 2025).

58. The BIA misconstrued the INA when deciding *Matter of Q. Li* and *Matter of Yajure-Hurtado* and these decisions are inapplicable here. This Court is not bound by the BIA's decisions. *Loper Bright* requires this Court to make its own determination and not rely on the BIA. *Loper Bright Enters., Inc. v. Raimondo*, 603 U.S. 369 (2024).

CLAIMS FOR RELIEF

COUNT ONE

Violation of Immigration & Nationality Act § 236, 8 U.S.C. §1226(a)

The allegations in the above paragraphs are realleged and incorporated herein.

59. Individuals detained pursuant to INA § 236/8 U.S.C. §1226(a) may be released on bond.

60. Petitioner is being improperly subjected to detention under INA § 235 when the applicable statute for his detention is INA § 236.

COUNT TWO

Violation of Fifth Amendment Due Process Clause and Administrative Procedure Act, 5 U.S.C. § 706(2)(D)

The allegations in the above paragraphs are realleged and incorporated herein.

61. The Fifth Amendment protects the right to be free from deprivation of life, liberty or property without due process of law. U.S. CONST. amend. V. The Due Process Clause extends to all "persons" regardless of status, including non-citizens, whether here lawfully, unlawfully, temporarily, or permanently *Zadvydas v. Davis*, 533 U.S. 678, 693, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001).

62. Under the APA this Court can, "hold unlawful and set aside agency action, findings, and conclusions found to be ... without observance of procedure required by law." 5 U.S. Code § 706.

63. Petitioner is being deprived of his liberty without due process of law. He is currently being improperly and indefinitely detained without the possibility of bond. Petitioner's detention is pursuant to INA § 236 and he should be afforded the opportunity to be heard in front of a neutral adjudicator for bond. He was detained without notice or cause and is now subject to detention without the possibility of bond.

PRAYER FOR RELIEF

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

64. Assume jurisdiction over this matter;
65. Order that Petitioner shall not be transferred outside the Eastern District of Pennsylvania while this habeas petition is pending;
66. Issue an Order to Show Cause ordering Respondents to show cause as to why this Petition should not be granted *within three (3) days*;
67. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment of the U.S. Constitution, the Immigration & Nationality Act, the Administrative Procedures Act, and their related federal regulations;
68. Declare that Petitioner is detained pursuant to § 1226(a) and that if Petitioner is re-detained in the future he will be detained pursuant to § 1226(a) *not* pursuant to § 1225;
69. Issue a Writ of Habeas Corpus ordering Respondents to release Petitioners immediately, or, in the alternative, direct DHS and EOIR to schedule a bond hearing before a neutral adjudicator within seven (7) days;
70. 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
71. Grant any further relief this Court deems just and proper.

Dated: December 17, 2025

Respectfully submitted,

/s/ Emma Marie Tuohy

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

I represent Petitioner, Cristian Yoberlin Vasquez Fuentes, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 17th day of December, 2025.

/s/ Emma Marie Tuohy
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