UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS

LEONARDO GUILLEN-CATOTA

Petitioner

V.

Case No. 3:25-cv-00720

Agency File [redacted]

PAMELA BONDI, U. S. Attorney General;

KRISTI NOEM, Secretary of the United States Department of Homeland Security;

U.S. DEPARTMENT OF HOMELAND SECURITY;

EXECUTIVE OFFICE FOR IMMIGRATION REVIEW;

FIELD OFFICE DIRECTOR, El Paso Field Office, U.S. Immigration and Customs Enforcement,;

ASSISTANT FIELD OFFICE DIRECTOR, El Paso Field Office, U.S. Immigration and Customs Enforcement,

Defendants-Respondents

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

The petitioner, Leonardo Guillen Catota, submits this Verified Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief, by and through undersigned counsel, and alleges as follows:

INTRODUCTION

1. Leonardo Guillen Catota is in the physical custody of Respondents at the El Paso East Montana Detention Facility (ICE) located in El Paso, Texas. He is

unlawfully detained pursuant mandatory detention policies recently adopted by the Department of Homeland Security (DHS) and the Executive Office for Immigration Review (EOIR).

2. Petitioner has been detained since August 6, 2025

4. Petitioner was denied bond on September 5, 2025, pursuant to a finding of flight risk by an immigration judge, despite strong U.S. ties. On December 17, 2025, he was denied a second bond hearing despite a showing of material change in circumstances with the birth of his US citizen child, a showing of ineffective assistance of counsel whereas he was unable to show significant business ties, and extensive community support.

5. The finding of flight risk by an immigration judge has no basis as evidence was provided that the petitioner has sufficient ties to ensure attendance at any future hearings, and in the alternative, flight risk can be ameliorated by a higher bond.

6. The petitioner declined to appeal his bond decision to the Board of Immigration Appeals (BIA) because it would be an exercise in futility, the BIA's caseload ensures that the petitioner's case-in-chief would be completed before the bond appeal decision is completed.

7. Additionally, further applications and appeals would be useless because since the petitioner's first bond hearing, the BIA issued a decision on September 5, 2025, in *Matter of Yajure Hurtado* which attempts to place individuals who entered without inspection under 8 U.S.C.§1225 mandatory detention. *Matter of*

Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025). The BIA appeal would be dismissed.

8. Accordingly, Petitioner seeks a writ of habeas corpus due to arbitrary bond denial which would be dismissed for lack of jurisdiction pursuant to *Yajure Hurtado*. The *de facto* absence of any appeal process violated due process. Petitioner requests an order requiring his release unless Respondents provide an additional bond hearing under § 1226(a) within fourteen days.

JURISDICTION

9. This action arises under the Constitution of the United States of America, 28 U. S. C. § 2241 et seq. (habeas corpus), the Immigration and Nationality Act (INA), 8 U. S. C. § 1101 et seq., Title 8 of the Code of Federal Regulations, and the Administrative Procedure Act (APA), 5 U. S. C. §§ 555(b), 701, et seq.

10. The Court has jurisdiction over this case under 28 U. S. C. § 2241 (habeas corpus), and § 1331 (federal question).

11. The Court may grant relief pursuant to the U.S. Const., art. I, § 9, cl. 2 (Suspension Clause), 28 U. S. C. § 1651 (All Writs Act), 28 U. S. C. §§ 2201–02 (declaratory relief), 28 U. S. C. § 2241 (habeas corpus), and 5 U. S. C. §§ 701 et seq. (Administrative Procedure Act).

VENUE

12. Venue is proper in this district under 28 U. S. C. §§ 1391(e)(1) & 2241 because: (1) "a substantial part of the events or omissions giving rise to the claim occurred" in this district; and (2) this is the district where the "the custodian can be reached by service of process." *Rasul v. Bush,* 542 U. S. 466, 478–79 (2004).

13. Additionally, the Petitioner is being held in the custody of the respondents in this district.

PARTIES

14. Petitioner, **Leonardo Guillen Catota**, is a citizen of El Salvador. He is present in the United States as a result of entering the United States on November 11, 2016, via the border as a human trafficking victim. He is being held in ICE custody at the El Paso East Montana Detention Facility (ICE) located in El Paso, Texas.

15. Respondent, **Pamela Bondi,** is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. She is sued in her official capacity

16. Respondent, **Kristi Noem**, is sued in her official capacity as the Secretary of the Department of Homeland Security (DHS). Because ICE is a subagency for the DHS, Secretary Noem is a legal custodian of the Petitioner, and is responsible for the prolonged detention of the Petitioner.

17. Respondent, **U.S. Department of Homeland Security (DHS),** is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.

18. Respondent, **Executive Office for Immigration Review (EOIR),** is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings.

19. Defendant, **Field Office Director,** El Paso Field Office, U.S. Immigration and Customs Enforcement is sued in his or her official capacity. In this capacity, the Field Office Director has jurisdiction over the detention facility in which the petitioner is held, is authorized to release the petitioner, and is a legal custodian of the petitioner

20. Defendant, **Assistant Field Office Director,** El Paso Field Office, U.S. Immigration and Customs Enforcement is sued in his or her official capacity. In this capacity, the Assistant Field Office Director has jurisdiction over the detention facility in which the petitioner is held, is authorized to release the petitioner, and is a legal custodian of the petitioner.

EXHAUSTION OF REMEDIES

21. "Exhaustion of administrative remedies is not required where an appeal of the issue to the BIA appears to be futile." *Hniguira v. Mayorkas,* No. CV H-23-3314, 2024 WL 1201634, at *6 (S.D. Tex. Mar. 20, 2024)," and see also *Fuller v. Rich,* 11 F.3d 61, 62 (5th Cir. 1994) ("exhaustion of administrative remedies is not required where they are 'unavailable or wholly inappropriate to the relief sought, or where the attempt to exhaust such remedies would itself be a patently futile course of action'")(internal quotation marks omitted.)

22. No statute, regulation, or other legal source with binding authority exists to provide the remedy that the petitioner's habeas claims seek to remedy.

23. The petitioner urgently seeks and is entitled to habeas relief because he has no meaningful opportunity to challenge the constitutionality of his detention through

any available administrative process. See *Boumediene v. Bush,* 553 U. S. 723, 783 (2008).

24. And with respect to the petitioner's APA claim, an agency's failure to take action is reviewable agency action, *Norton v. S. Utah Wilderness Alliance*, 542 U. S. 55, 61–62 (2004), and there are no administrative remedies available that the petitioner is required to exhaust under *Darby v. Cisneros*, 509 U. S. 137 (1993).

REQUIREMENTS OF 28 U.S.C. § 2243

25. 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, the Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

26. 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 (CA 9 2000)(citation omitted); *See also, Johnson v. Rogers,* 917 F.2d 1283, 1284 (10th Cir. 1990).

FACTUAL ALLEGATIONS

27. Leonardo Guillen Catota is a native and citizen of El Salvador born [redacted]

28. Mr. Guillen Catota initially entered the U.S. on or about March 26, 2021 without inspection or admission at or near McAllen, Texas.

29. Since his entry, Mr. Guillen-Catota has lived and worked in the United States, working in construction, landscaping and other various employment.

30. Mr. Guillen Catota has never been arrested for any crime in the United States or elsewhere other than possibly driving without a license.

31. Mr. Guillen Catota was picked up by ICE on or around August 6, 2025, and has been detained ever since.

32. At a September 5, 2025, bond hearing the immigration judge denied his bond purely on a matter of flight risk without a reasoned explanation why his ties to the comm unity were insufficient or why less restrictive alternatives (higher bond, GPS monitoring, reporting conditions) could not reasonably mitigate any risk. **Exhibit 1.**

33. The very same day, September 5, 2025, the Board of Immigration Appeals decided *Matter of Yajure Hurtado*, 29 I&N Dec 216 (BIA 2025), a precedent decision that found that any noncitizen who is present in the United States without having been inspected and admitted is subject to detention under INA § 235(b)(2), not INA § 236(a). **Exhibit 2.** The decision is based on a new reading of § 235, adopted by DHS in July 2025, that has already been widely rejected by federal courts. This decision effectively would cause the BIA to dismiss any appeals from noncitizens (just like the petitioner) who are present with having been inspected and admitted.

34. Petitioner filed a second bond motion on December 15, 2025, providing evidence of material change in circumstances which was denied without even a hearing on December 15, 2025 citing that there were no material changes in circumstances. **Exhibit 3.**

35. To appeal this question of whether a newborn USC child and ineffective assistance of counsel constitutes material change of circumstances to allow the hearing for the December 15, 2025, bond motion would be futile because the BIA ascribes to its decision that *Matter of Yajure Hurtado* would render the petitioner ineligible for bond and would dismiss any appeal on that basis.

36. To date, Immigration Courts continue to deny jurisdiction for bond to those who are present in the United States without inspection and admission despite a class-certified nationwide final order placing the petitioner and those in his class as subject to 8 U.S.C. §1226 and eligible for bond. **Exhibit 4.**

LEGAL FRAMEWORK

37. The BIA has set out precedent decisions regarding how to decide whether to grant bond for a detained person.

38. First, the IJ must determine if the Alien is a danger to the community then determine the amount of bond to ensure the alien's presence at proceedings. The "setting of bond is designed to ensure an alien's presence at proceedings." *Matter of Urena,* 25 I&N Dec. 140 (BIA 2009)

39. Second, Burden of respondent to show IJ that not a danger to society nor flight risk. The flight risk and amount of bond is determined by: a.) Whether alien has fixed address in US; b.) Alien's length of residence in US; c.) Alien's family ties

in US and whether they may entitle alien relief; d.) Alien's Employment history; e.) Alien's record of Appearance in Court; f.) Alien's criminal record; g.) Alien's history of immigration violations; h.) Any attempts to flee prosecution; i.) Manner of entry into the US. Pursuant to *Matter of Guerra* 24 I&N Dec. 37 (BIA 2006) Also *Matter of Patel,* 15 I&N Dec. 666 (BIA 1976).

40. Finally, once the alien is not deemed a danger to the community, flight risk may potentially be ameliorated by a higher bond. *Matter of Patel,* 15 I&N Dec. 666 (BIA 1976).

41. Pursuant to 8 C.F.R.§ 1003.19(e), after an initial bond redetermination, an alien's request for a subsequent bond redetermination shall be made in writing and shall be considered only upon a showing that the alien's circumstances have changed materially since the prior bond redetermination. See also *Matter of Uluocha*, 20 I&N Dec. 133, 134 (BIA1989).

42. A new position taken by the Board of Immigration Appeals has foreclosed the petitioner's right to appeal his denial. This new position deems the petitioner as an "applicant for admission" under 8 U.S.C.§1225 and ineligible for release. Explanation as follows:

43. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.

44. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an Immigration Judge (IJ). 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).

45. 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). Most aliens are place into these "regular" proceedings, however there are exceptions, such as the removal of someone who has re-entered illegally after a prior removal or whether the alien has been convicted of an aggravated felony. Although not limited to these two exceptions, these two exceptions are relevant to this complaint and are explained in detail below.

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

47. This foreclosure for appeal for the petitioner concerns the detention provisions at §§ 1226(a) and 1225(b)(2).

48. 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. Section 1226 was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

49. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without admission or parole 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).

50. Thus, in the decades that followed, most people who entered without admission or parole and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible. 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)).

51. On July 8, 2025, ICE, "in coordination with" the Department of Justice, announced a new policy that rejected this well-established understanding of the statutory framework and reversed decades of practice.

52. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission," claims that all persons who entered the United States without admission or parole shall now be deemed "applicants for admission" under 8 U.S.C. § 1225, and therefore are subject to mandatory detention 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.

53. On September 5, 2025, the BIA adopted this same position in *Matter of Yajure Hurtado*. There, the Board held that all noncitizens who entered the United States

without admission or parole are considered applicants for admission who are seeking admission and are ineligible for IJ bond hearings.

54. Dozens of federal courts have rejected Respondents' new interpretation of the INA's detention authorities.

55. Moreover, the District Court of Central California certified a class of noncitizens and issued an order of declaratory judgment placing all class members as subject to 8 U.S.C.§ 1226 and bond-eligible. **Exhibit 4.**

56. The immigrations courts are ignoring this declaratory judgment.

57. The Supreme Court has "always been careful not to 'minimize the importance and fundamental nature' of the individual's right to liberty." *Foucha v. Louisiana*, 504 U.S. 71, 80, 112 S.Ct. 1780, 118 L.Ed.2d 437 (1992) (quoting *United States v. Salerno,* 481 U.S. 739, 750, 107 S.Ct. 2095, 95 L.Ed.2d 697 (1987)).

58. The Supreme Court "is clear that commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection." *Foucha,* 504 U.S. at 80, 112 S.Ct. 1780 (emphasis added) (quoting *Jones v. United States,* 463 U.S. 354, 361, 103 S.Ct. 3043, 77 L.Ed.2d 694 (1983)). Thus, immigration detention is an extraordinary liberty deprivation that must be "carefully limited." Salerno, 481 U.S. at 755, 107 S.Ct. 2095.

CLAIMS FOR RELIEF

COUNT I:
Unlawful Detention in Violation of Due Process

59. The allegations in paragraphs 1-58 are realleged and incorporated herein.

60. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment—from

government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

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

62. The government's detention of the petitioner without a proper bond redetermination hearing to determine whether they are a flight risk or danger to others violates his right to due process. Any attempt to appeal his most recent denial with the BIA will be fruitless because the BIA is holding firm that the immigration court does not have jurisdiction to determine bond for aliens in similar situation as the petitioner despite a final order, class certification and injunction requiring a bond hearing under §1226.

63. The petitioner's continued civil immigration detention, without meaningful opportunity to present his case to be heard by a neutral decisionmaker as to whether that detention should continue, has become prolonged is in violation of constitutional due process.

64. The bond denial was not supported by an individualized finding that no conditions of release could reasonably assure appearance. *Singh v. Holder,* 638 F.3d 1196, 1202 (9th Cir. 2011) ("[A]lthough the Attorney General's 'discretionary judgment ... shall not be subject to review,' claims that the discretionary process itself was constitutionally flawed are 'cognizable in federal court on habeas because they fit comfortably within the scope of § 2241.' "); See

also *Glushchenko v. United States Dep't of Homeland Sec.*, 566 F. Supp. 3d 693, 703 (W.D. Tex. 2021)

65. Therefore, the petitioner is entitled to a writ of habeas corpus granting him a bond hearing conducted either by the Court, or by the Immigration Judge, with the right to appeal the issue of whether his change of circumstances warrants a new bond hearing.

COUNT II:
Violation of the Administrative Procedures Act

66. The allegations in paragraphs 1-58 are realleged and incorporated herein.

67. The purpose of the Administrative Procedures Act ("APA") is to prevent abuse of discretion by federal agencies by granting federal judiciary authority to review the actions of such agencies.

68. The APA also empowers Federal Courts to review federal agencies to "compel agency action unlawfully withheld or *unreasonably* delayed". 5 U.S.C. § 706(1) (emphasis added).

69. The Court may also hold unlawful and set aside agency action that, inter alia, is found to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law". 5 U.S.C. § 706(2)(A); or "without observance of procedure required by law." 5 U.S.C. § 706(2)(D). "Agency action" includes, in relevant part, "an agency rule, order, license, sanction, relief or the equivalent or denial thereof, or *failure to act.*" 5 U.S.C. §551(13)(emphasis added).

70. The immigration judge's bond decision was arbitrary and capricious because it entirely failed to address or weigh substantial record evidence of community ties; offered no explanation why alternatives short of detention would be inadequate;

and relied upon boilerplate "flight risk" language with no rational connection to the facts. **However, it is not the merits of the discretionary decision of the judge but that it is never within the Attorney General's discretion to act unconstitutionally.** *Glushchenko v. United States Dep't of Homeland Sec.*, 566 F. Supp. 3d 693, 703 (W.D. Tex. 2021)

71. The APA, therefore, grants this Court authority to review that agency action (i.e. refusal to obey a nationwide class declaratory judgment in which said refusal will render moot any appeal that attempts to overcome the grounds for denial) to determine whether such agency action constitutes an "abuse of discretion" or has been "unreasonably delayed" in violation of the APA.

PRAYER FOR RELIEF

WHEREFORE, the petitioner prays that the Court grant the following relief:

(a) Assume jurisdiction over this matter;

(b) Set this matter for expedited consideration pursuant to 28 U.S.C. § 1657;

(c) Issue a writ of habeas corpus clarifying that the statutory basis for petitioner's detention is 8 U.S.C. § 1226(a) and that 8 U.S.C. § 1225(b)(2)(A) does not apply to petitioner;

(d) Order the respondents to refrain from transferring the petitioner out of the jurisdiction of this Court during the pendency of this proceeding and while the petitioner remains in the respondents' custody;

(e) Alternatively, grant the petitioner a writ of habeas corpus ordering that the petitioner be afforded bond hearing conducted either by the Court, or by

the Immigration Judge, based on the new evidence that the petitioner is a danger or a flight risk;

(f) Award petitioner attorneys' fees and costs under the Equal Access to Justice Act (EAJA), as amended, 5 U.S.C. § 2412, and on any other basis justified under law; and

(g) Grant any other and further relief that the Court deems just and proper.

Dated December 22, 2025

/s/Bonnie Smerdon
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VERIFICATION BY SOMEONE ACTING ON THE PETITIONER'S BEHALF PURSUANT TO 28 U.S.C. § 2242

I, Bonnie Smerdon, am submitting this verification on behalf of the petitioner because I am the petitioner's federal attorney. I am acting on behalf of the petitioner, Leonardo Guillen Catota based on discussions with him. On the basis of these discussions, I hereby verify that the statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: December 22, 2025

/s/Bonnie Smerdon
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LIST OF EXHIBITS

EXHIBIT 1	September 5, 2025 Immigration Judge Bond Decision
EXHIBT 2	*Matter of Yajure Hurtado,* 29 I&N Dec. 216 (BIA 2025)
EXHIBIT 3	December 15, 2025 Immigration Judge Bond Decision
EXHIBIT 4	District Court Orders on *Maldonado-Bautista v. Sanchez* 5:25-cv-01873-SSS-BFM (CDCal 2025)