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IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF PENNSYLVANIA

WALTOAYNER DE OLIVEIRA-FARIAS

Petitioner,

v.

Brian MCSHANE, Field Office Director of
Enforcement and Removal Operations,
Philadelphia 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;

Jamal LAWRENCE, Warden of
PHILADELPHIA FEDERAL DETENTION
CENTER

Respondents.

Case No. 2:26-cv-160

**PETITION FOR WRIT OF
HABEAS CORPUS**

INTRODUCTION

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2 1. Petitioner, Waltoayner De Oliveira Farias, is in the physical custody of
3 Respondents at the Philadelphia Federal Detention Center. He now faces unlawful detention
4 because the Department of Homeland Security (DHS) and the Executive Office of Immigration
5 Review (EOIR) have concluded Petitioner is subject to mandatory detention.

6 2. Petitioner is charged with, inter alia, having entered the United States without
7 admission or inspection. *See* 8 U.S.C. § 1182(a)(6)(A)(i).

8 3. Based on this allegation in Petitioner’s removal proceedings, DHS denied
9 Petitioner’s release from immigration custody, consistent with a new DHS policy issued on July
10 8, 2025, instructing all Immigration and Customs Enforcement (ICE) employees to consider
11 anyone inadmissible under § 1182(a)(6)(A)(i)—i.e., those who entered the United States without
12 admission or inspection—to be subject to detention under 8 U.S.C. § 1225(b)(2)(A) and
13 therefore ineligible to be released on bond.

14 4. Similarly, on September 5, 2025, the Board of Immigration Appeals (BIA or
15 Board) issued a precedent decision, binding on all immigration judges, holding that an
16 immigration judge has no authority to consider bond requests for any person who entered the
17 United States without admission. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).
18 The Board determined that such individuals are subject to detention under 8 U.S.C. §
19 1225(b)(2)(A) and therefore ineligible to be released on bond.

20 5. Petitioner’s detention on this basis violates the plain language of the Immigration
21 and Nationality Act. Section 1225(b)(2)(A) does not apply to individuals like Petitioner who
22 were previously detained under § 1226(a) at their initial apprehension by ICE, were released on
23 their own recognizance pursuant to the same portion of the statute and are now residing in the
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1 United States. Instead, upon re-arrest and detention by ICE, such individuals are still subject to §
2 1226(a), that allows for release on conditional parole or bond. That statute expressly applies to
3 people who, like Petitioner, are charged as inadmissible for having entered the United States
4 without inspection and are residing inside the United States.

5 6. Respondents' new legal interpretation is plainly contrary to the statutory
6 framework and contrary to decades of agency practice applying § 1226(a) to people like
7 Petitioner.

8 7. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be released
9 from detention immediately.

10 8. In the alternative, Petitioner seeks a writ of habeas corpus requiring that
11 Respondents provide a bond hearing under § 1226(a) within seven days.

12 JURISDICTION

13 9. Petitioner is in the physical custody of Respondents. Petitioner is detained at the
14 Federal Detention Center in Philadelphia, Pennsylvania. *See Exhibit A – ICE Detainee Locator*
15 *Screenshot dated 1/11/2026.*

16 10. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28
17 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States
18 Constitution (the Suspension Clause).

19 11. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory
20 Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

VENUE

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2 12. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-
3 500 (1973), venue lies in the United States District Court for the Eastern District of
4 Pennsylvania, the judicial district in which Petitioner currently is detained.

5 13. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because
6 Respondents are employees, officers, and agencies of the United States, and because a
7 substantial part of the events or omissions giving rise to the claims occurred in the Eastern
8 District.

REQUIREMENTS OF 28 U.S.C. § 2243

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10 14. The Court must grant the petition for writ of habeas corpus or order Respondents
11 to show cause “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an
12 order to show cause is issued, Respondents must file a return “within three days unless for good
13 cause additional time, not exceeding twenty days, is allowed.” *Id.*

14 15. Habeas corpus is “perhaps the most important writ known to the constitutional
15 law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or
16 confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). “The application for the
17 writ usurps the attention and displaces the calendar of the judge or justice who entertains it and
18 receives prompt action from him within the four corners of the application.” *Yong v. I.N.S.*, 208
19 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

PARTIES

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21 16. Petitioner is a citizen of Brazil who has been in immigration detention since
22 January 7, 2026. After arresting Petitioner during a raid of Petitioner’s workplace, when
23 Petitioner was merely at work and was targeted for unknown reasons by ICE agents, ICE did not
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1 set bond, and Petitioner is unable to obtain review of his custody by an IJ, pursuant to the
2 Board's decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

3 17. Respondent Brian McShane is the Director of the Philadelphia Field Office of
4 ICE's Enforcement and Removal Operations division. As such, Brian McShane is Petitioner's
5 immediate custodian and is responsible for Petitioner's detention and removal. He is named in
6 his official capacity.

7 18. Respondent Kristi Noem is the Secretary of the Department of Homeland
8 Security. She is responsible for the implementation and enforcement of the Immigration and
9 Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Ms.
10 Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

11 19. Respondent Department of Homeland Security (DHS) is the federal agency
12 responsible for implementing and enforcing the INA, including the detention and removal of
13 noncitizens.

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

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

21 22. Respondent Jamal Lawrence is employed by the Bureau of Prisons as Warden of
22 the Federal Detention Center where Petitioner is detained. Mr. Lawrence has immediate physical
23 custody of Petitioner. He is sued in his official capacity.

LEGAL FRAMEWORK

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

4 24. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal
5 proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally
6 entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d),
7 while noncitizens who have been arrested, charged with, or convicted of certain crimes are
8 subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

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

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

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

15 28. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the
16 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No.
17 104–208, Div. C, §§ 302–03, 110 Stat. 3009–546, 3009–582 to 3009–583, 3009–585. Section
18 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119-1,
19 139 Stat. 3 (2025).

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

3 30. Thus, in the decades that followed, most people who entered without inspection
4 and were placed in standard removal proceedings received bond hearings, unless their criminal
5 history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). That practice was consistent
6 with decades of prior practice, in which noncitizens who were not deemed “arriving” were
7 entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994);
8 *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply “restates” the
9 detention authority previously found at § 1252(a)). Even individuals who were apprehended at
10 the border and not immediately detained but placed in standard removal proceedings under 8
11 U.S.C. § 1229a, would historically have been considered detained under § 1226(a) should they
12 alter been detained in the interior of the U.S., and thus eligible for bond before an immigration
13 judge.

14 31. On July 8, 2025, ICE, “in coordination with” DOJ, announced a new policy that
15 rejected well-established understanding of the statutory framework and reversed decades of
16 practice.

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

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

5 34. This followed a May 15, 2025, decision by the BIA holding an applicant for
6 admission arrested without a warrant while arriving in the United States and subsequently placed
7 into removal proceedings is detained under 8 U.S.C. § 1225(b). *Matter of Q. Li*, 29 I&N Dec. 66
8 (BIA 2025).

9 35. Since Respondents adopted their new policies, dozens of federal courts have
10 rejected their new interpretation of the INA's detention authorities. Courts have likewise rejected
11 *Matter of Yajure Hurtado*, which adopts the same reading of the statute as ICE.

12 36. Subsequently, court after court has adopted the same reading of the INA's
13 detention authorities and rejected ICE and EOIR's new interpretation. *See, e.g., Rodriguez*
14 *Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025); *Gomes v. Hyde*, No. 1:25-CV-
15 11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No. CV 25-
16 11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v.*
17 *Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025),
18 *report and recommendation adopted*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133
19 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL
20 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025
21 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW
22 (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM,
23 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025
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1 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF,
2 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-
3 JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-
4 KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051
5 (ECT/DJF), --- F. Supp. 3d ----, 2025 WL 2466670 (D. Minn. Aug. 27, 2025) *Lopez-Campos v.*
6 *Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025);
7 *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3,
8 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D.
9 Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D.
10 Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass.
11 Sept. 9, 2025); *see also, e.g., Palma Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at *2
12 (D. Neb. Sept. 3, 2025) (noting that “[t]he Court tends to agree” that § 1226(a) and not §
13 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL
14 2402271 at *3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-
15 RCC, 2025 WL 2374224 at *2 (D. Neb. Aug. 14, 2025) (same).

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

19 38. Section 1226(a) applies by default to all persons “pending a decision on whether
20 the [noncitizen] is to be removed from the United States.” These removal hearings are held under
21 § 1229a, to “decid[e] the inadmissibility or deportability of a[] [noncitizen].”

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

7 40. Section 1226 therefore leaves no doubt that it applies to people who face charges
8 of being inadmissible to the United States, including those who are present without admission or
9 parole.

10 41. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who
11 recently entered the United States. The statute’s entire framework is premised on inspections at
12 the border of people who are “seeking admission” to the United States. 8 U.S.C.
13 § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme
14 applies “at the Nation’s borders and ports of entry, where the Government must determine
15 whether a[] [noncitizen] seeking to enter the country is admissible.” *Jennings v. Rodriguez*, 583
16 U.S. 281, 287 (2018).

17 42. Immigration officials and the Department of Justice (DOJ) have long taken the
18 position that immigration officials have broad discretion not to apply the detention and expedited
19 removal procedures § 1225(b), and whether to classify individuals encountered inside the United
20 States shortly after crossing the border as subject to § 1225(b) detention or § 1226(a) detention.
21 *See* Brief for Petitioners at 4-7 (No. 21-954), *Biden v. Texas*, 597 U.S. 785 (2022). The DOJ has
22 stated, “[t]he INA affords DHS multiple options for processing applications for admission,” and
23 that includes arrest and detention pursuant to § 1226(a). *See id.* at 4-5.

1 43. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not
2 apply to people like Petitioner, who were detained and released by ICE on their own
3 recognizance pursuant to § 1226(a) before being re-detained by ICE sometime later while living
4 in the United States.

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7 **FACTS**

8 44. Petitioner has resided in the United States since July 25, 2022, when he entered
9 the United States. *See Exhibit B – Petitioner’s Entry Documents.* Petitioner lives in Beverly,
10 New Jersey with his wife and five (5) year old daughter.

11 45. On January 7, 2025, Petitioner was arrested while at work during an unannounced
12 raid by ICE agents. Petitioner does not have any criminal history and was not detained for any
13 specific infraction. Petitioner was simply trying to support his family at the time.

14 46. When Petitioner was initially apprehended by ICE at the border in July of 2022,
15 he was detained pursuant to 8 U.S.C. § 1226(a), released on his own recognizance, and required
16 to attend routine check-ins with ICE. Petitioner has not missed any ICE check-ins. After being
17 released by ICE at the border, Petitioner’s wife conducted check-ins on behalf of the entire
18 family without issue. The family’s next scheduled ICE check in is Monday, January 12, 2026.

19 47. Petitioner is now detained at the Federal Detention Center in Philadelphia, PA.

20 48. DHS placed Petitioner in removal proceedings before the Philadelphia
21 Immigration Court pursuant to 8 U.S.C. § 1229a on or about January 9, 2026, shortly after
22 Petitioner was initially apprehended by immigration officials in New York. ICE has charged
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1 Petitioner with, *inter alia*, being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as someone who
2 entered the United States without inspection. See **Exhibit C – Notice to Appear**.

3 49. Petitioner had previously filed form I-589 with USCIS – seeking protection via
4 asylum, Withholding of Removal and/or protection under the Convention Against Torture. See
5 **Exhibit D – I-589 Receipt Notice**.

6 50. Petitioner’s application was received by USCIS on April 11, 2025. Accordingly,
7 this application was pending at the time Petitioner was apprehended on January 7, 2026. No
8 interview to assess the merits of his claim had been scheduled at the time of his detention.

9 51. The documents provided to Petitioner when he was first apprehended by ICE in
10 July of 2022 clearly indicate he was arrested, detained, and released on his own recognizance
11 pursuant to 8 U.S.C. § 1226(a).

12 52. ICE detained him without explanation on January 7, 2025. Petitioner’s removal
13 proceedings are now pending with the Executive Office for Immigration Review (EOIR).

14 53. Petitioner has lived with his wife and his young daughter since his arrival in the
15 United States. He has never been criminally arrested or apprehended by law enforcement, apart
16 from his immigration arrest, and has become a valued member of his community. Petitioner
17 filed an application for asylum on or about March 26, 2025, evincing his eligibility for relief
18 before the immigration court. Petitioner is neither a flight risk nor a danger to the community.

19 54. Following Petitioner’s arrest and transfer to Federal Detention Center, ICE issued
20 a custody determination to continue Petitioner’s detention without an opportunity to post bond or
21 be released on other conditions.

22 55. Pursuant to *Matter of Yajure Hurtado*, the immigration judge is unable to consider
23 Petitioner’s bond request because he entered the United States without inspection.
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1 56. As a result, Petitioner remains in detention. Without relief from this court, he
2 faces the prospect of months, or even years, in immigration custody, separated from his extended
3 family and community.

4 **CLAIMS FOR RELIEF**

5 **COUNT I**

6 **Violation of the INA**

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

9 58. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all
10 noncitizens residing in the United States who are subject to the grounds of inadmissibility. As
11 relevant here, it does not apply to those who previously entered the country and were
12 apprehended pursuant to § 1226(a), placed in removal proceedings and released, and have been
13 residing inside the United States before their detention. Such noncitizens are detained under §
14 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

15 59. Respondents made a discretionary determination to issue a warrant for
16 Petitioner's arrest in July of 2022 and made a custody determination to release him on his own
17 recognizance pursuant to § 1226(a). Respondents now essentially seek to *ex post facto*
18 redetermine the statute under which they are detaining Petitioner based on ICE's July 8, 2025
19 policy change, that is at direct odds with the plain language of the statute. They now argue that
20 Petitioner is detained under § 1225(b)(2) despite previously arresting him pursuant to § 1226(a)
21 and making a custody determination to release him on his own recognizance pursuant to their
22 authority under that section.

23 60. Rather, Respondents' rearrest of Petitioner on January 7, 2026, was pursuant to
24 the earlier administrative warrant DHS issued over a year earlier, pursuant to § 1226(a).

1 Respondents have consistently treated Petitioner as subject to § 1226(a) until this point. This is
2 further supported by the fact that Petitioner was not paroled into the United States pursuant to §
3 1182(d)(5)(A), which is the only mechanism for DHS to release someone detained under §
4 1225(b). *See Jennings v. Rodriguez*, 583 U.S. 281, 300 (2018). Respondent was released on his
5 own recognizance, which is only a mechanism for release under § 1226(a). *See Exhibit B*.

6 61. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued
7 detention and violates the INA.

8 **COUNT II**
9 **Violation of the Bond Regulations**

10 62. Petitioner incorporates by reference the allegations of fact set forth in preceding
11 paragraphs.

12 63. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-
13 Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA.
14 Specifically, under the heading of “Apprehension, Custody, and Detention of [Noncitizens],” the
15 agencies explained that “[d]espite being applicants for admission, [noncitizens] who are present
16 without having been admitted or paroled (formerly referred to as [noncitizens] who entered
17 without inspection) will be eligible for bond and bond redetermination.” 62 Fed. Reg. at 10323
18 (emphasis added). The agencies thus made clear that individuals who had entered without
19 inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. §
20 1226 and its implementing regulations.

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

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

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COUNT III
Violation of Due Process

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

67. 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).

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

69. The government’s detention of Petitioner without a bond redetermination hearing to determine whether he is a flight risk or danger to others violates his right to due process.

PRAYER FOR RELIEF

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

- a. Assume jurisdiction over this matter;
- b. Order that Petitioner shall not be transferred outside the Eastern District of Pennsylvania while this habeas petition is pending;
- c. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;
- d. Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner.
- e. In the alternative, Issue a Writ of Habeas Corpus requiring that Respondents provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) within seven days;
- f. Declare that Petitioner is detained pursuant to 8 U.S.C. § 1226(a);

- 1 g. Declare that Petitioner's detention is unlawful;
- 2 h. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act
- 3 ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under
- 4 law; and
- 5 i. Grant any other and further relief that this Court deems just and proper.

6 DATED this 11th of January 2026.

7 /s/ Conor Deane

8 Conor A. Deane, Esq.

9 Ferreira Law

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11 Philadelphia, PA 19152

12 Telephone: 267-521-2143

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15 *Attorney for Petitioner*

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IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF PENNSYLVANIA

WALTOAYNER DE OLIVEIRA FARIAS

v.

MCSHANE, ET AL.

Case No. 2:26-cv-160

**PETITION FOR WRIT OF
HABEAS CORPUS**

EXHIBIT LIST

<u>Exhibit</u>		<u>Page</u>
A.	Printout of ICE Detainee Locator, evidencing Petitioner is housed at the Federal Detention Center in Philadelphia;	1
B.	Petitioner's Entry Documents, establishing that Petitioner entered into the United States on July 25, 2022 and was released on parole;	3
C.	Notice to Appear in Immigration Court.	9
D.	Petitioner's Receipt Notice with USCIS, establishing that his asylum application was received on April 11, 2025 and pending at the time of his detention	14