UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Cristian Midael Cardona Marroquin,

Petitioner,

v.

Kristi Noem, in her official capacity as Secretary of the Department of Homeland Security;

Todd M. Lyons, in his official capacity as Acting Director of Immigration and Customs Enforcement;

Garret Ripa, in his official capacity as Miami Field Office Director, Immigration and Customs Enforcement's Enforcement and Removal Operations;

Mitchell Diaz, in his official capacity as Assistant Field Office Director, Broward Transitional Center;

Cynthia Swain, in her Official capacity as Warden of Broward Transitional Center

Respondents.

Case No: _____

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

INTRODUCTION

1. Petitioner, Cristian Midael Cardona Marroquin ([redacted]) ("Petitioner"), is a native and citizen of Guatemala who entered the United States in June of 2023 and has lived here continuously since that time.
2. Upon arrival to the United States, the Department of Homeland Security ("DHS") identified Petitioner as an Unaccompanied Child ("UC") from Guatemala.

3. Shortly thereafter, the Department of Homeland Security ("DHS") transferred Petitioner to the Office of Refugee Resettlement ("ORR"), which released him to a sponsor after determining he posed no flight or safety risk.
4. Petitioner later filed an asylum application with United States Citizenship and Immigration Services ("USCIS") and obtained a valid Employment Authorization Document ("EAD").
5. Petitioner is a member of the J.O.P. class and cannot be removed given his pending asylum application before USCIS.
6. On September 29, 2025, Petitioner was detained while on his way to work with his co-worker, who was driving the vehicle that was pulled over. Petitioner was arrested even though he had a valid EAD, a pending asylum application, no criminal history, and was not in removal proceedings.
7. DHS then placed him into standard removal proceedings under 8 U.S.C. § 1229a. Petitioner has requested custody redetermination under § 1226(a), but two different Immigration Judges declined to conduct a bond hearing, relying on *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), which treats all individuals who entered without admission or parole as subject to mandatory detention under 8 U.S.C. § 1225(b)(2).
8. On December 18, 2025, however, the Central District of California issued Final Judgment in *Lazaro Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. Dec. 18, 2025), finding *Yajure Hurtado* is no longer controlling and the legal conclusion underlying the decision is no longer tenable; holding that individuals like Petitioner, are detained under 8 U.S.C. § 1226(a) and are therefore eligible for

bond. Yet, two Immigration Judges have refused to conduct an individualized bond hearing in Petitioner's case

9. Because Petitioner cannot currently be removed due to his pending asylum application and applicable class protections under the J.O.P. Settlement Agreement, and because USCIS has placed an indefinite hold on all asylum applications, regardless of what country the applicant is from, he faces indefinite detention without individualized custody review.

10. This petition seeks habeas relief holding that Petitioner's detention is governed by § 1226(a), not § 1225(b), and ordering his release or, at minimum, granting Petitioner an individualized bond hearing.

JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 2241 *et seq.* (habeas corpus); 28 U.S.C. § 1651 (All Writs Act); 28 U.S.C. §§ 1331 (federal question) and 1346(a)(2) (original jurisdiction over United States as defendant); and 28 U.S.C. § 2201-02 (declaratory relief).

12. Venue is proper in the Southern District of Florida pursuant to 28 U.S.C. § 2241 because Petitioner is detained at the Broward Transitional Center ("BTC") in Pompano Beach, Florida under the jurisdiction of the ICE Miami Field Office.

PARTIES

13. Petitioner, Cristian Midael Cardona Marroquin, is a native and citizen of Guatemala who last entered the United States in June 2023, and has a pending application for Asylum with USCIS. He is currently detained in ICE custody at the BTC in Pompano Beach, Florida.

14. Respondent, Kristi Noem, in her official capacity as Secretary of the Department of Homeland Security, is the official responsible for overseeing BTC, the facility where Petitioner is currently detained. This Respondent is a legal custodian of Petitioner and is sued in his or her official capacity.

15. Respondent, Todd M. Lyons, in his official capacity as Acting Director of Immigration and Customs Enforcement is the official responsible for overseeing BTC, the facility where Petitioner is currently detained. This Respondent is a legal custodian of Petitioner and is sued in his or her official capacity.

16. Respondent, Garret Ripa, in his official capacity as Miami Field Office Director, Immigration and Customs Enforcement's Enforcement and Removal Operations is the official responsible for overseeing BTC, the facility where Petitioner is currently detained. This Respondent is a legal custodian of Petitioner and is sued in his or her official capacity.

17. Respondent, Mitchell Diaz, in his official capacity as Assistant Field Office Director, Broward Transitional Center, is the official responsible for overseeing BTC, the facility where Petitioner is currently detained. This Respondent is a legal custodian of Petitioner and is sued in his or her official capacity.

18. Respondent, Cynthia Swain, in her Official capacity as Warden of Broward Transitional Center is the official responsible for overseeing BTC, the facility where Petitioner is currently detained. This Respondent is a legal custodian of Petitioner and is sued in his or her official capacity.

LEGAL FRAMEWORK FOR IMMIGRATION DETENTION

19. Civil immigration detention is presumptively unconstitutional absent its

authorization by a special justification enacted pursuant to an Act of Congress. *Sopo v. U.S. Att'y Gen.*, 825 F.3d 1199, 1210 (11th Cir. 2016) ("Under the Due Process Clause, civil detention is permissible only when there is a 'special justification' that 'outweighs the individual's constitutionally protected interest in avoiding physical restraint.' ") (citation omitted), *vacated on mootness grounds*, 890 F.3d 952 (2018). 102.

20. The Immigration and Nationality Act ("INA") contains two principal detention statutes for noncitizens before a final order of removal: 8 U.S.C. §§ 1225 and 1226.

21. The detention provisions at 8 U.S.C. § 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.

22. 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard non-expedited removal proceedings before an immigration judge. *See* 8 U.S.C. § 1229a. Individuals detained under the authority of § 1226(a) are entitled to a bond hearing at the outset of their detention. S*ee* 8 C.F.R. §§ 1003.19(a), 1236.1(d).

23. By contrast, 8 U.S.C. § 1225 applies to recent arrivals and individuals seeking admission at the border and authorized mandatory detention for specified categories. *See* 8 U.S.C. §§ 1225(b)(1), (b)(2).

24. Following enactment of the IIRIRA, EOIR drafted new regulations explaining 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) ("Despite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as noncitizens who entered without inspection) will be eligible for bond and bond redetermination . . . The effect of this change is that inadmissible [noncitizens], except for arriving [noncitizens], have available to them bond redetermination hearings before an immigration judge, while arriving [noncitizens] do not. This procedure maintains the *status quo* . . .").

25. Thus, in the decades that followed, most people who entered without inspection, unless they were subject to some other detention authority, received bond hearings. 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 Immigration Judge 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)).

26. Respondents' policy turned this well-established understanding on its head and violates the statutory scheme.

27. Indeed, this legal theory that noncitizens who entered the United States without admission or parole are ineligible for bond hearings was previously rejected by a District Court in the Western District of Washington, finding that such individuals are entitled to bond redetermination hearings before immigration judges, and rejecting the application of § 1225(b)(2) to such cases. *Rodriguez v. Bostock*, No. 3:25-cv-05240-TMC, 2025 WL 1193850, at *12 (W.D. Wash. Apr. 24, 2025).

28. Despite this finding from a federal court, on July 8, 2025, ICE released a memorandum instructing its attorneys to coordinate with the Department of Justice, the agency housing EOIR, to reject bond redetermination hearings for applicants who arrived in the United States without documents.

29. On September 5, 2025, the Board of Immigration Appeals ("BIA") issued an opinion adopting this approach to the detention statutes, *see Matter of Yajure Hurtado*, 29 I. & N. Dec. at 220 (BIA 2025), further entrenching the government's interpretation of the governing detention statutes. Because this decision is precedential, it is binding on immigration judges, absent contrary instructions from a federal court exercising habeas jurisdiction.

30. This interpretation defied the INA. The plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

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

32. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a). Section 1226 (a) therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole.

33. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. The statute's entire framework is premised on inspections at the border of people who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A).

34. The government's interpretation subjects all inadmissible noncitizens to 8 U.S.C. § 1225 and its mandatory detention provisions. But such a reading renders superfluous significant portions of 8 U.S.C. § 1226(c) that reference inadmissible noncitizens, including 8 U.S.C. § 1226(c)(1)(E) that Congress enacted in 2025 by passing the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).

35. The new subsection makes a noncitizen subject to mandatory detention if the noncitizen (i) is inadmissible under 8 U.S.C. §§ 1182(a)(6)(A), (6)(C), or (7) (the "inadmissibility criterion"); and (ii) is charged with, arrested for, convicted of, or admits to committing certain crimes (the "criminal conduct criterion"). 8 U.S.C. § 1226(c)(1)(E) (emphasis added). By using the conjunction "and," the provision mandates detention only where the inadmissibility criterion and the criminal conduct criterion are both satisfied.

36. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to people like Petitioner who are alleged to have entered the United States without admission or parole.

REQUIREMENTS OF 28 U.S.C. § 2243

37. 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).

38. 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).

39. There is no statutory requirement of administrative exhaustion before a habeas action is brought before a federal court. See 8 U.S.C. § 1252(d)(1); *Garza-Garcia v. Moore*, 539 F. Supp. 2d 899, 904 (S.D. Tex. 2007) ("Under the INA exhaustion of administrative remedies is only required by Congress for appeals on final orders of removal.").

40. To be clear and as explained in detail in this Petition, Petitioner has sought remedy before three separate IJs. First he filed a motion for termination of proceedings which was denied. He then filed two motions for custody redetermination to conduct the required 8 U.S.C. § 1226 Bond Hearing. The first IJ declined to issue any determination pending guidance from EOIR and the second IJ followed EOIR's directive to continue to uphold *Matter of Yajure Hurtado*.

41. Chief Immigration Judge Teresa L. Riley issued nationwide guidance on January 14, 2026 instructing all immigration judges that, "*Maldonado Bautista* is not a nationwide injunction and does not purport to vacate, stay or enjoin *Yajure Hurtado*." Immigration judges are instructed to follow the BIA's decision in *Matter of Yajure Hurtado* as binding precedent.

42. Given the BIA's prior ruling in *Matter of Yajure Hurtado*, and the newly issued instruction that *Yajure Hurtado* remains binding precedent, it is clear that virtually any appeal would be futile and require Petitioner to continue to remain detained indefinitely.

43. This Court has previously agreed that because a, ""bond appeal to the BIA is nearly a foregone conclusion under [*Yajure Hurtado*], any prudential exhaustion requirements are excused for futility." *Alvarez v. Morris*, No. 25-24806-CV, 2025 U.S. Dist. LEXIS 271658, at *5 (S.D. Fla. Oct. 27, 2025) Citing the following cases, *Puga v. Assistant Field Off. Dir., Krome North Serv. Processing* Ctr., 25-cv-24535, 2025 U.S. Dist. LEXIS 203222, 2025 WL 2938369, at *2 (S.D. Fla. Oct. 15, 2025); *see also Jefry Josue Del Cid Del Cid and Marlon Letona Marroquin Marroquin v. Pamela Bondi*, 2025 U.S. Dist. LEXIS 209136, 2025 WL 2985150, at *13 (W.D. Pa. Oct. 23, 2025); *Guerrero Orellana v. Moniz*, 2025 U.S. Dist. LEXIS 196282, 2025 WL 2809996, at *4 n.2 (D. Mass. Oct. 3, 2025); *Inlago Tocagon v. Moniz*, 2025 U.S. Dist. LEXIS 191829, 2025 WL 2778023, at *2 (D. Mass. Sep. 29, 2025); *Roman v. Noem*, No. 25-cv-01684, 2025 U.S. Dist. LEXIS 186389, 2025 WL 2710211, at *5 (D. Nev. Sep. 23, 2025); *Vazquez v. Feeley*, No. 25-cv-01542, 2025 U.S. Dist. LEXIS 182412, 2025 WL 2676082, at *9-10 (D. Nev. Sep. 17, 2025).

44. Petitioner has exhausted all available remedies and remains in detention in violation of statutes and his right to Due Process.

FACTUAL ALLEGATIONS AND RELEVANT BACKGROUND

45. Petitioner is a native and citizen of Guatemala who entered the United States for the first and only time in June of 2023 and has resided in the United States continuously since that date.

46. When DHS inspected Petitioner at the border, it correctly identified him as UC, as defined in the Homeland Security Act of 2002 ("HSA") and the Trafficking Victims Protection Reauthorization Act of 2008 ("TVPRA"). *See* 6 U.S.C. § 279(g)(2)); 8 U.S.C. § 1232(g).

47. Pursuant to the HSA and TVPRA, DHS transferred custody of Petitioner to the Department of Health and Human Services ("HHS"), Office of Refugee Resettlement ("ORR"), to whom Congress has authorized custody determinations over UCs. *See* 6 U.S.C. §§ 279(b)(1), (1)(C); 8 U.S.C. § 1232(b)(3).

48. On August 15, 2023, after considering the "[g]eneral principles that apply to the care and placement of" Petitioner, which includes whether he was a danger to the community or a flight risk, the ORR released him to the care of his sponsor, Yennifer Cardona Marroquin pursuant to section 462 of the Homeland Security Act of 2002 and section 235 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008. *See* 8 U.S.C. § 1232(c)(2)(a); 45 C.F.R. § 410.1003(f).

49. There has been no change in Petitioner's circumstances, such as accruing any criminal history in the United States, that would disturb the ORR's determination.

50. On July 1, 2024 Petitioner filed Form I-589, Application for Asylum and Withholding of Removal with USCIS.

51. Petitioner meets the requirements for J.O.P class membership which prohibits removal from the United States during the pendency of the asylum application with USCIS.[1]

52. Petitioner's Asylum application continues to be pending and is on an indefinite hold given USCIS' December 2, 2025 direction to, "[p]lace a hold on all Forms I-589... regardless of the alien's country of nationality, pending a comprehensive review." U.S. Citizenship & Immigration Services, Policy Memorandum No. PM-602-0192: Hold and Review of all Pending Asylum Applications and all USCIS Benefit Applications Filed by Aliens from High-Risk Countries (Dec. 2, 2025), available at https://www.uscis.gov/sites/default/files/document/policy-alerts/PM-602-0192-PendingApplicationsHighRiskCountries-20251202.pdf.

53. On January 7, 2025, Petitioner received his valid EAD.

54. On September 29, 2025, Petitioner was detained while on his way to work with his co-worker, who was driving the vehicle that was pulled over. Petitioner was in possession of his valid EAD at the time. Petitioner does not have a criminal history nor was he in removal proceedings at the time of his detention. Nevertheless, he was briefly sent to the high security Everglades Detention Facility (also known as "Alligator Alcatraz") prior to being transferred to BTC, where he remains to this day.

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[1] Petitioner is a J.O.P. class member because: 1) he was previously determined to be a UC; 2) he filed his I-589 with USCIS prior to February 24, 2025; 3) he was 18 years old when he filed his I-589 with USCIS; and 4) USCIS has not adjudicated his I-589 on the merits. *See J.O.P v. D.H.S. et al*, DE 199-2, 8:19-CV-01944-SAG at 6-10; *see also* J.O.P 8:19-CV-01944-SAG at DE 205 (Court Order Granting Joint Motion for Final Approval of Settlement Agreement).

55. On October 31, 2025, Petitioner filed a motion to terminate, arguing that the IJ should exercise the discretion to terminate proceedings pursuant to 8 CFR § 1003.18(d)(1)(ii)(A), which allows the IJ to terminate removal proceedings upon proof that a UC has filed an asylum application with USCIS. Petitioner argued that termination was appropriate given his status a J.O.P. class member and the positive equities in his case.

56. As a J.O.P. class member, Petitioner benefits from several protections, which apply to detained as well as non-detained class members. Specifically, under the J.O.P. settlement agreement, DHS should not oppose a motion to terminate absent a respondent specific reason. If a removal order is issued, the J.O.P settlement agreement prohibits ICE from removing class members who are awaiting adjudication of their I-589s with USCIS.

57. DHS filed its Response to Petitioner's Motion to Terminate Removal Proceedings on November 5, 2025 arguing that it retains discretion to oppose a J.O.P. class member's Motion to Terminate "if it deems such opposition warranted based on the individual facts of the case." DHS proceeded to argue that it "exercised its discretion to keep the Respondent in removal proceedings because he is in the United States without legal status and was recently encountered during a vehicle stop in Miami."

58. There was no further argument as to the particular facts and circumstances warranting its opposition to termination and, thus, Respondent's continued detention. Yet, the IJ adopted DHS's position on November 11, 2025 and denied Petitioner's Motion to Terminate. However, the IJ urged parties to submit a request with USCIS to expedite the processing of Petitioner's pending I-589 application given his detention.

59. Petitioner did so on November 17, 2025. However, he has yet to receive an asylum interview date from USCIS. Further, as of December 2, 2025, USCIS has paused the processing of all asylum applications.

60. Petitioner now remains indefinitely detained.

61. On December 15, 2025, Petitioner filed his first Motion for Custody Redetermination. Petitioner argued that he is not subject to mandatory detention under 8 U.S.C. § 1225(b) and that he has a right to an individualized bond hearing under 8 U.S.C. § 1226.

62. On December 19, 2025, Petitioner attended his first Bond Hearing. OPLA posited that, pursuant to *Matter of Yajure Hurtado*, the Court did not have jurisdiction to redetermine Petitioner's custody. Petitioner, through counsel, argued that the Court has jurisdiction to redetermine Petitioner's custody pursuant to the Final Judgment entered in *Maldonado Bautista* on December 18, 2025, which explicitly states that "*Yujure Hurtado* is no longer controlling and the legal conclusion underlying the decision is no longer tenable." *Lazaro Maldonado Bautista et al v. Ernesto Santacruz Jr et al* DE 92 Case 5:25-cv-01873-SSS-BFM at 6.

63. The IJ acknowledged that she reviewed the December 18, 2025 Final Judgment, but indicated that she was still waiting on guidance from EOIR regarding how to proceed. Therefore, she entered "No Action" and instructed Petitioner to re-file his Motion for Custody Redetermination. Petitioner was denied his statutory entitled individualized bond hearing.

64. On December 23, 2025, Petitioner filed his second Motion for Custody Redetermination. During the hearing on December 30, 2025, Petitioner cited the clear

and unambiguous language in the *Maldonado Bautista* Final Judgment holding that, "*Yajure Hurtado* is no longer controlling the legal conclusion underlying the decision is no longer tenable" *id.* However, OPLA again, contrary to a binding federal order, argued that the IJ lacked jurisdiction to hold a bond hearing because the court was still bound by *Matter of Yajure Hurtado*.[2]

65. OPLA's arguments were in line with the *Maldonado Bautista* Court's "troubling" reports that DHS continues to direct immigration courts to ignore federal court orders.

66. Petitioner also argued that because he entered as a minor and was appropriately designated a UC, he was processed under the TVPRA and not under § 1225, making mandatory detention under § 1225 inapplicable.

67. The IJ again declined to conduct an individualized bond hearing, stating in his December 30, 2025 Order that "[t]he Court's current understanding is that *Matter of Yajure Hurtado*, 29 I. & N Dec. 216 (BIA 2025), remains in effect and this Court does not have jurisdiction over these bond proceedings."

68. As such, the IJ refused to conduct a substantive bond hearing.

69. In declining to conduct the individualized bond hearing, the IJ disregarded the clear language of § 1226, the Final Judgment holding that *Matter of Yajure Hurtado* was

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[2] This is a common issue with DHS's attorneys as the *Maldonado Bautista* Court itself noted in its December 18, 2025 clarifying order stating, "Namely, the Application provides numerous declarations indicating Respondents' [DHS] failure to comply with the Court's orders by continuing to deny bond hearings for class members and/or Respondents' [DHS] issuing guidance to disregard the Court's declaratory judgment." *Lazaro Maldonado Bautista et al v. Ernesto Santacruz Jr et al* DE 92 Case 5:25-cv-01873-SSS-BFM at 7.

See also: "Similarly, and perhaps more troubling, is the emergence of the Respondents' direction to IJs that they should disregard this Court's orders. [App. at 9]. Petitioners have provided evidence that the Office of Immigration Litigation issued a memorandum instructing IJs to 'hold the position that *Yajure Hurtado* remains good law.'" *Id* at 9 (internal citations not included).

no longer controlling, and disregarding a the Federal Court's comments finding it troubling that DHS continues to advise IJs to ignore Federal Orders.

70. Given Petitioner's status as a J.O.P. class member unable to be removed from the United States until his Asylum application is processed by USCIS and USCIS' indefinite pause on the processing of all asylum applications, Petitioner now remains in detention indefinitely and without cause.

71. This petition for a writ of habeas corpus challenges the legal basis for Respondents continuing to hold Petitioner without affording him an individualized custody redetermination hearing on the theory that he is subject to mandatory detention under 8 U.S.C. § 1225(b).

72. That theory is incorrect. Petitioner is being detained indefinitely, and as a noncitizen already in the country, his custody is governed by 8 U.S.C. § 1226(a), which provides for discretionary detention and bond eligibility. Treating him as mandatorily detained under § 1225 conflicts with statutory text, structure, and long-standing practice.

73. The government's recent policy shift—culminating in agency guidance and the BIA's decision in *Yajure Hurtado*, 29 I. & N. Dec. 216—categorically denies bond eligibility to individuals like Petitioner based solely on manner of entry. Applied here, that approach forecloses a neutral, individualized assessment despite Petitioner's ability to show that he continues to pose no danger to the community and no flight risk.

74. This Court has rejected the BIA's reasoning in *Matter of Yajure Hurtado* and declined to follow it in granting habeas relief to petitioners in the Southern District of Florida. *See, e.g., Merino v. Ripa*, No. 25-23845-CIV-MARTINEZ, 2025 LX 451385,

at *14 (S.D. Fla. Oct. 15, 2025) ("This Court likewise declines to follow *Matter of Yajure Hurtado*, whose interpretation of § 1225 is at odds with the text of § 1225 and § 1226, is inconsistent with earlier BIA decisions, and renders superfluous the recent Laken Riley Act amendments to § 1226(c)."); *see also Puga v. Ass't Field Office Dir.*, No. 25-24535-CIV, 2025 LX 462379, at *13-14 (S.D. Fla. Oct. 15, 2025) ("[T]he Court finds that section 1226(a) and its implementing regulations govern Petitioner's detention, not section 1225(b)(2)(A). Petitioner is entitled to an individualized bond hearing as a detainee under section 1226(a)."); *see also Alvarez v. Morris*, No. 25-24806-CV, 2025 U.S. Dist. LEXIS 271658, at *6 (S.D. Fla. Oct. 27, 2025) ("Countless federal courts nationwide, including this one, have addressed this issue. As far as the Court is aware, every court has arrived at the same answer: Petitioner is correct. The IJ and Respondents' interpretation of the INA "directly contravenes the statute, disregards decades of settled precedent," and is erroneous.") (internal citations omitted).

75. Further, the Central District of California has expressly held that the underlying legal principle espoused in *Matter of Yajure Hurtado* is no longer tenable. *Lazaro Maldonado Bautista et al v. Ernesto Santacruz Jr et al* DE 92 Case 5:25-cv-01873-SSS-BFM at 6. That Court has certified a class directing immigration courts to hold substantive bond hearings for class members under § 1226.

76. Petitioner therefore seeks habeas relief to hold that § 1226(a) governs his custody and to order Respondents to release Petitioner or at least provide him the individualized custody redetermination hearing before an immigration judge to which he is statutorily and constitutionally entitled.

CAUSES OF ACTION

COUNT ONE
Violation of 8 U.S.C. § 1226(a)
Unlawful Denial of Bond Hearing

77. Petitioner re-alleges paragraphs 1 to 76 as if fully stated herein.

78. Respondents' continued detention of Petitioner without the opportunity for him to obtain a bond hearing on the theory that he is subject to mandatory detention under 8 U.S.C. § 1225 contravenes the INA and Due Process.

79. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to noncitizens residing in the United States who are subject to the grounds of inadmissibility because they previously entered the country without being admitted or paroled.

80. Such noncitizens are detained under § 1226(a), unless they are subject to another detention provision, such as § 1225(b)(1), § 1226(c), or § 1231. The application of § 1225(b)(2) to bar Petitioner from receiving a custody redetermination substantive bond hearing before an immigration judge violates the INA.

81. Rather, § 1225 applies to noncitizens actively "seeking admission" at the border or its immediate functional equivalent. By contrast, § 1226 governs the arrest and detention of those "already in the country" pursuant to a warrant issued by the Attorney General. The two provisions are mutually exclusive. *See Jennings v. Rodriguez*, 583 U.S. 281, 288-89 (2018).

82. As Petitioner entered as a minor and was appropriately designated a UC, he was processed under the TVPRA and released by ORR, making mandatory detention under § 1225 inapplicable.

83. Even if Petitioner appeals the immigration judge's denial of his bond motion, the DHS will continue to detain Petitioner pending the appeal. Considering the BIA's decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 220, the DHS is virtually guaranteed to win the appeal.

84. Based on DHS, the BIA, and IJs' past conduct, it is virtually certain that Petitioner will continue to be detained indefinitely without substantive hearing as required under § 1226 without the intervention of this Court.

85. In *Matter of Yajure Hurtado*, the BIA held that all noncitizens who entered the United States without admission or parole, like Petitioner, are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and are ineligible for bond hearings. It constitutes the BIA's affirmation of Respondents' faulty reimagining of the governing detention statutes.

86. This Court has rejected the BIA's reasoning in *Matter of Yajure Hurtado* and declined to follow it in granting habeas relief to petitioners in the Southern District of Florida. *See, e.g.*, *Merino v. Ripa*, No. 25-23845-CIV-MARTINEZ, 2025 LX 451385, at *14 (S.D. Fla. Oct. 15, 2025); *Puga v. Ass't Field Office Dir.*, No. 25-24535-CIV, 2025 LX 462379, at *13-14 (S.D. Fla. Oct. 15, 2025); *see also Alvarez v. Morris*, No. 25-24806-CV, 2025 U.S. Dist. LEXIS 271658, at *6 (S.D. Fla. Oct. 27, 2025) ("Countless federal courts nationwide, including this one, have addressed this issue. As far as the Court is aware, every court has arrived at the same answer: Petitioner is correct. The IJ and Respondents' interpretation of the INA "directly contravenes the statute, disregards decades of settled precedent," and is erroneous.")[3]

87. Numerous other federal courts have ruled that the BIA's decision is not entitled to any deference under *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024), and

[3] The court cites dozens of case in support of its decision to grant relief.

have overwhelmingly rejected the BIA's decision in *Yajure Hurtado*, concluding it is contrary to law. *See, e.g.*, *Antonio Aguirre Villa v. Normand*, No. 5:25-cv-89, 2025 LX 442534, at *35-36 (S.D. Ga. Nov. 4, 2025) ("I conclude Petitioner is not subject to mandatory detention under 8 U.S.C. § 1225(b)(2) . . . Thus, Petitioner's detention based on 8 U.S.C. § 1225(b)(2) is unlawful. Any immigration court order which has relied on this misinterpretation to continue to detain Petitioner is contrary to the INA, and therefore, § 2241 relief is proper."); *J.A.M. v. Streeval*, No. 4:25-cv-342 (CDL), 2025 LX 418115, at *14-16 (M.D. Ga. Nov. 1, 2025) (rejecting the government's arguments, which largely parrot the rationale in *Yajure Hurtado* . . . [to] conclude[] that § 1226(a), not § 1225(b)(2), applies" to immigrants like Petitioner, and ordering the immigration court to grant a bond hearing); *Garcia v. Noem*, No. 2:25-cv-00879-SPC-NPM, 2025 LX 400655, at *11 (M.D. Fla. Oct. 31, 2025) ("Since DHS's change in policy, courts in this District and around the country have rejected its new interpretation of the INA. This Court agrees with the growing consensus."). [4]

[4] The overwhelming majority of United States Federal District Courts outside of the Eleventh Circuit have drawn the same conclusion. *See, e.g., Hernandez Lopez v. Hardin*, No. 2:25-cv-830-KCD-NPM, 2025 U.S. Dist. LEXIS 212865, 2025 WL 3022245 (M.D. Fla. Oct. 29, 2025); *Aguilar Guerra v. Joyce*, 2:25-cv-534-SDN, 2025 U.S. Dist. LEXIS 208608, 2025 WL 2986316 (D. Maine Oct. 23, 2025); *Contreras Maldonado v. Cabezas*, No. 25-cv-13004, 2025 U.S. Dist. LEXIS 208752, 2025 WL 2985256 (D. N.J. Oct. 23, 2025); *Gomez Garcia v. Noem*, No. 5:25-cv-02771-ODW (PDx), 2025 U.S. Dist. LEXIS 209286, 2025 WL 2986672 (C.D. Cal. Oct. 22, 2025); *Loa Caballero v. Baltazar*, No. 25-cv-03120-NYW, 2025 U.S. Dist. LEXIS 208290, 2025 WL 2977650 (D.Colo. Oct. 22, 2025); *Ochoa Ochoa v. Noem*, No. 25-CV-10865, 2025 U.S. Dist. LEXIS 204142, 2025 WL 2938779 (N.D. Ill. Oct. 16, 2025); *N.A. v. Larose*, No. 25-cv-2384-RSH-BLM, 2025 U.S. Dist. LEXIS 198688, 2025 WL 2841989 (S.D. Cal. Oct. 7, 2025); *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 U.S. Dist. LEXIS 188232, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 U.S. Dist. LEXIS 175513, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 U.S. Dist. LEXIS 175767, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 U.S. Dist. LEXIS 174828, 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 U.S. Dist. LEXIS 171714, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 U.S. Dist. LEXIS 169423, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 U.S. Dist. LEXIS 167280, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Leal-*

88. Despite the *Maldonado Bautista* Court holding that, "*Yajure Hurtado* is no longer controlling; the legal conclusion underlying the decision is no longer tenable", Petitioner has been denied multiple substantive bond hearings by the immigration judges at BTC, to which he is entitled as an individual subject to detention under 8 U.S.C. § 1226(a).

89. Petitioner was not "seeking admission" within the meaning of § 1225(b) but was "already in the country" within the meaning of *Jennings*, 583 U.S. at 288–89. His custody is governed by § 1226(a), under which detention is discretionary and subject to individualized bond hearings.

90. The Court should, at a minimum, order Respondents to grant an individualized bond hearing consistent with long-standing practice.

COUNT TWO

Violations of the Due Process Clause of the Fifth Amendment of the U.S. Constitution, U.S. Const. amend. V, cl. 4

91. Petitioner re-alleges paragraphs 1 to 76 as if fully stated herein.

92. Under the Fifth Amendment to the United States Constitution, those threatened with the loss of liberty or property due to the actions of the federal government are entitled

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Hernandez v. Noem, No. 1:25-cv-02428-JRR, 2025 U.S. Dist. LEXIS 165015, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 U.S. Dist. LEXIS 163056, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Samb v. Joyce*, No. 25 Civ. 6373 (DEH), 2025 U.S. Dist. LEXIS 161109, 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 U.S. Dist. LEXIS 160622, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 U.S. Dist. LEXIS 158808, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Maldonado v. Olson*, No. 25-cv-03142-SRN-SGE, 2025 U.S. Dist. LEXIS 158321, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Lopez Benitez v. Francis*, No. 25 Civ. 5937 (DEH), 2025 U.S. Dist. LEXIS 157214, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Rosado v. Figueroa*, No. 25-CV-02157-PHX-DLR (CDB), 2025 U.S. Dist. LEXIS 156344, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted*, No. 25-CV-02157-PHX-DLR (CDB), 2025 U.S. Dist. LEXIS 156336, 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Diaz Martinez v. Hyde*, No. 25-CV-11613-BEM, 2025 U.S. Dist. LEXIS 141724, 2025 WL 2084238 (D. Mass. July 24, 2025); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 U.S. Dist. LEXIS 128085, 2025 WL 1869299 (D. Mass. July 7, 2025).

to due process of law. The procedural due process guarantee of the Fifth Amendment requires that individuals be provided notice and an opportunity to be heard before being deprived of liberty or property interests. *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976).

93. The Constitution establishes due process rights for "all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

94. To determine whether civil detention violates a detainee's Fifth Amendment procedural due process rights, courts apply the three-part test articulated in *Mathews v. Eldridge*, 424 U.S. 319 (1976). Under that test, courts must weigh (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Id.* at 335.

95. Applying the familiar *Mathews* test, Petitioner's liberty interest is paramount, and the risk of erroneous deprivation is extreme considering that Petitioner, who has no criminal history in the United States, and whom the ORR has already determined is not a flight risk or danger to the community, is not subject to mandatory detention under 8 U.S.C. § 1226(c). Likewise, the risk of erroneous deprivation of liberty is great due to the lack of a non-independent adjudicator. *Marcello v. Bonds*, 349 U.S. 302, 305-06 (1955). Finally, the government's interest in keeping Petitioner indefinitely detained is minimal. As a *J.O.P.* class member, petitioner should never

have been held in detention; he does not, and did not, present any flight risk or danger. He has been continuously residing in the same address in Florida since his arrival as a UC, and has strong ties to the community. His continued detention is not rationally related to any purpose.

96. Given USCIS's directive to cease processing Asylum applications, and Petitioner's status as a protected J.O.P. class member which prohibits removal for pending Asylum applications, Petitioner will remain indefinitely detained for the foreseeable future.

97. The Court should grant this Habeas Petition and Order Petitioner to go free due to Respondents' depriving him of his Due Process rights. Otherwise, Petitioner will remain indefinitely detained.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

(a) Assume jurisdiction over this matter;

(b) Grant the writ of habeas corpus and order that Respondents release Petitioner from immigration detention, or at minimum order a custody redetermination individualized bond hearing consistent with 8 U.S.C. § 1226(a);

(c) Declare that Petitioner's continued detention without a custody redetermination hearing violates the Due Process Clause of the Fifth Amendment and exceeds the scope of authority permitted under the Immigration and Nationality Act, 8 U.S.C. § 1226;

(d) Declare that Petitioner's continued detention given his J.O.P. class membership preventing removal pending processing of his USCIS's asylum claim and USCIS's

hold on processing all asylum claims violates the Due Process Clause of the Fifth Amendment as Petitioner would remain in detention indefinitely for the foreseeable future.

(e) Enjoin the Respondents from transferring Petitioner outside the jurisdiction of the U.S. District Court for the Southern District of Florida;

(f) Award petitioner costs and reasonable attorneys' fees in this action as provided for by the Equal Access to Justice Act, 28 U.S.C. § 2412; and

(g) Grant any additional relief that this Court deems just and proper.

Dated: January 28, 2026

Respectfully submitted,

By: /s *John H. Wilbur III*
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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Cristian Midael Cardona Marroquin, 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 and belief.

Dated this 28 Day of January, 2026.

/s/ John H. Wilbur III
John H. Wilbur III