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

OSWALDO NICOLAS CAAL-CAAL

Petitioner,

v.

Michael T. ROSE, 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-00556

PETITION FOR WRIT OF HABEAS CORPUS

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INTRODUCTION

2 1. Petitioner Oswaldo Nicolas Caal-Caal is in the physical custody of Respondents
3 at the Philadelphia Federal Detention Center. He now faces unlawful detention because the
4 Department of Homeland Security (DHS) and the Executive Office of Immigration Review
5 (EOIR) have concluded Petitioner is subject to mandatory detention. Prior to his detention, he
6 had lived in the United States, first in New York then more recently in Pennsylvania for over two
7 years after entering the United States without inspection in approximately June 2023. When
8 Respondent entered the United States, he was 16 years old and was designated an
9 Unaccompanied Child ("UC"). He is now 18 years old.

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

12 3. Based on this allegation in Petitioner's removal proceedings, DHS denied
13 Petitioner's release from immigration custody, consistent with a new DHS policy issued on July
14 8, 2025, instructing all Immigration and Customs Enforcement (ICE) employees to consider
15 anyone inadmissible under § 1182(a)(6)(A)(i)—i.e., those who entered the United States without
16 admission or inspection—to be subject to detention under 8 U.S.C. § 1225(b)(2)(A) and
17 therefore ineligible to be released on bond.

18 4. Petitioner is detained pending his removal proceedings without access to a
19 hearing conducted by a neutral decisionmaker—a federal judge or an immigration judge—to
20 determine whether his detention is warranted based on danger or flight risk, pursuant to the
21 BIA's recent decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

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

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

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

8. In the alternative, if the statute does authorize Petitioner's detention without a bond hearing, it violates his rights to substantive and procedural due process. Detention of all noncitizens who are subject to inadmissibility grounds, like Petitioner, without any individualized hearing does not "bear a reasonable relation to the purpose for which the individual was committed." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Moreover, application of the *Mathews v. Eldridge* balancing test shows that a bond hearing is necessary to protect Petitioner from an unnecessary deprivation of liberty. 424 U.S. 319, 335 (1976).

9. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be immediately released from custody, as his detention was unlawful. In the alternative, Petitioner seeks a writ requiring Respondents provide a bond hearing under § 1226(a) within seven days.

JURISDICTION

10. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Federal Detention Center in Philadelphia, Pennsylvania.

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

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

VENUE

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

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

REQUIREMENTS OF 28 U.S.C. § 2243

15. 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

1 order to show cause is issued, Respondents must file a return "within three days unless for good
2 cause additional time, not exceeding twenty days, is allowed." *Id.*
3 16. Habeas corpus is "perhaps the most important writ known to the constitutional
4 law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or
5 confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). "The application for the
6 writ usurps the attention and displaces the calendar of the judge or justice who entertains it and
7 receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208
8 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).
9 **PARTIES**
10 17. Petitioner Caal-Caal is a citizen of Guatemala who has been in immigration
11 detention since January 27, 2026. After arresting Petitioner while he was walking out of Dunkin
12 Donuts in Upper Darby, PA, ICE did not set bond, and Petitioner is unable to obtain review of
13 his custody by an IJ, pursuant to the Board's decision in *Matter of Yajure Hurtado*, 29 I. & N.
14 Dec. 216 (BIA 2025).
15 18. Respondent Michael T. Rose is the Director of the Philadelphia Field Office of
16 ICE's Enforcement and Removal Operations division. As such, Michael T. Rose is Petitioner's
17 immediate custodian and is responsible for Petitioner's detention and removal. He is named in
18 his official capacity.
19 19. Respondent Kristi Noem is the Secretary of the Department of Homeland
20 Security. She is responsible for the implementation and enforcement of the Immigration and
21 Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Ms.
22 Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.
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20. Respondent Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.

21. 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.

22. 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.

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

FACTS

24. Petitioner has resided in the United States since June 2023 and has lived in New York and Upper Darby, Pennsylvania since that time.

25. On January 27, 2026, Petitioner was arrested while getting his morning coffee at Dunkin Donuts in Upper Darby. He walked into Dunkin Donuts, and upon walking out, a plain-clothed agent approached him and told him he "had seen him walk into" Dunkin Donuts and waited for him outside. Then, as more agents approached, the agent asked Petitioner his name, place of birth, and nationality.

26. When Petitioner was initially apprehended by ICE at the southern border on around June 2023, he was classified as a UC and sent to an Office of Refugee Resettlement

(ORR) shelter, where he remained for about a month and a half before he was release to his uncle in Kingston, NY. Petitioner was issued a Notice to Appear (NTA) in immigration court, and his next court hearing had been scheduled for March 10, 2026 at Federal Plaza in New York City. He was charged as someone who entered the United States without admission or parole, and was released from immigration custody to the care of his uncle. On information and belief, Petitioner has attended all appointments required of him. Petitioner is now detained at the Federal Detention Center in Philadelphia, PA.

27. DHS placed Petitioner in removal proceedings before the New York Broadway Immigration Court pursuant to 8 U.S.C. § 1229a on or about April 24, 2025, almost two years after Petitioner was initially apprehended by immigration officials at the southern border and placed in ORR custody. ICE has charged Petitioner with, *inter alia*, being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as someone who entered the United States without inspection.

28. ICE detained him without explanation on January 27, 2026, and based on the sequence of events as reported by the Petitioner, federal immigration agents had no reason to begin questioning Petitioner in the first place. Respondent's removal proceedings remain pending with the immigration court.

29. Petitioner has lived in the New York and Philadelphia areas for the past two and a half years, since his arrival in the United States. He first lived with his uncle in New York, and then moved in with his older brother in the Upper Darby area. He has never been criminally arrested or apprehended by law enforcement, apart from his immigration arrest, and has become a valued member of his community. As a UC, Petitioner is eligible for Special Immigration Juvenile Status, as he entered the U.S. as a minor and can show he was abused, neglected, or

abandoned by one or both of his parents, and it is not in his best interest to return to his home country. Petitioner is neither a flight risk nor a danger to the community.

30. Following Petitioner's arrest and transfer to the Philadelphia Federal Detention Center, ICE issued a custody determination to continue Petitioner's detention without an opportunity to post bond or be released on other conditions.

31. Pursuant to *Matter of Yajure Hurtado,* the immigration judge is unable to consider Petitioner's bond request because he entered the United States without inspection. This is confirmed by EOIR's nationwide policy instructing all immigration judges to follow *Yajure Hurtado* notwithstanding the class certification and final judgement in *Maldonado Bautista. et al. v. Santacruz Jr et al.*, 5:25-cv-01873-SSS-BFM (C.D. Cal. Nov. 25, 2025). However, since the *Maldonado Bautista* class does not extend to individuals apprehended at the border, that ruling is not applicable here regardless.

32. As a result, Petitioner remains in detention. Without relief from this court, he faces the prospect of months, or even years, in immigration custody, separated from his family and community.

LEGAL FRAMEWORK

I. Section 1226(a) Governs the Detention of People Like Petitioner Who are Detained in the United States and Have Not Previously Been Admitted

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

34. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an 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),

1 while noncitizens who have been arrested, charged with, or convicted of certain crimes are
2 subject to mandatory detention, *see* 8 U.S.C. § 1226(c).
3 35. Second, the INA provides for mandatory detention of noncitizens subject to
4 expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission
5 referred to under § 1225(b)(2).
6 36. Last, the INA also provides for detention of noncitizens who have been ordered
7 removed, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)–(b).
8 37. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).
9 38. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the
10 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No.
11 104—208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section
12 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1,
13 139 Stat. 3 (2025).
14 39. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining
15 that, in general, people who entered the country without inspection were not considered detained
16 under § 1225 and that they were instead detained under § 1226(a). *See* Inspection and Expedited
17 Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings;
18 Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).
19 40. Thus, in the decades that followed, most people who entered without inspection
20 and were placed in standard removal proceedings received bond hearings, unless their criminal
21 history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). *Diaz Martinez v. Hyde*, No. 25-
22 11613, 2025 WL 2084238, -- F. Supp. 3d --, at *4 (D. Mass. July 24, 2025). That practice was
23 consistent with many more decades of prior practice, in which noncitizens who were not deemed
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1 "arriving" were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. §
2 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a)
3 simply "restates" the detention authority previously found at § 1252(a)). Even individuals who
4 were apprehended at the border and not immediately detained but placed in standard removal
5 proceedings under 8 U.S.C. § 1229a, would historically have been considered detained under
6 § 1226(a) should they alter been detained in the interior of the U.S., and thus eligible for bond
7 before an immigration judge.

8 41. On July 8, 2025, ICE, "in coordination with" DOJ, abruptly changed course and
9 announced a new policy that rejected well-established understanding of the statutory framework
10 and reversed decades of practice, stating the agency has "revisited" its legal position and
11 believed that § 1225, not § 1226, governs the detention of noncitizens who are present in the
12 United States without having been admitted. *Diaz Martinez*, 2025 WL 2084238, at *4.

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

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

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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 44. This followed a May 15, 2025, decision by the BIA holding an applicant for
2 admission arrested without a warrant while arriving in the United States and subsequently placed
3 into removal proceedings is detained under 8 U.S.C. § 1225(b). *Matter of Q. Li*, 29 I&N Dec. 66
4 (BIA 2025).
5 45. This policy was recently re-affirmed by Chief Immigration Judge Teresa Riley to
6 all of EOIR nationwide, requiring immigration judges to follow *Yajure Hurtado*.
7 46. Since Respondents adopted their new policies, dozens of federal courts have
8 rejected their new interpretation of the INA's detention authorities. Courts have likewise rejected
9 *Matter of Yajure Hurtado*, which adopts the same reading of the statute as ICE.
10 47. Subsequently, court after court (over 300 at last tally and growing each day) has
11 adopted the same reading of the INA's detention authorities and rejected ICE and EOIR's new
12 interpretation. *See, e.g.*, *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash.
13 2025); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025);
14 *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238 (D.
15 Mass. July 24, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL
16 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted*, No. CV-25-02157-
17 PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No.
18 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No.
19 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v.*
20 *Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025);
21 *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v.*
22 *Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo*
23 *v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-*
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1 *Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025);
2 *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025);
3 *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d ----, 2025 WL 2466670 (D.
4 Minn. Aug. 27, 2025) *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL
5 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM,
6 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304
7 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-
8 CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-
9 11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *see also, e.g., Palma Perez v. Berg*,
10 No. 8:25CV494, 2025 WL 2531566, at *2 (D. Neb. Sept. 3, 2025) (noting that "[t]he Court tends
11 to agree" that § 1226(a) and not § 1225(b)(2) authorizes detention); *Jacintò v. Trump*, No. 4:25-
12 cv-03161-JFB-RCC, 2025 WL 2402271 at *3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v.*
13 *Kramer*, No. 4:25-cv-03158-JFB-RCC, 2025 WL 2374224 at *2 (D. Neb. Aug. 14, 2025)
14 (same). *See* Tab C.

15 48. Courts have uniformly rejected DHS's and EOIR's new interpretation because it
16 defies the INA. As these decisions explain, the BIA's decision in *Matter of Yajure Hurtado*
17 defies the INA. The plain text of the statutory provisions demonstrates that § 1226(a), not §
18 1225(b), applies to people like Petitioner.

19 49. 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." *See Jennings v. Rodriguez*, 583 U.S.
21 281, 288 (2018) (describing 1226(a) as the "default rule" for detention of noncitizens pending
22 removal). These removal hearings are held under § 1229a, to "decid[e] the inadmissibility or
23 deportability of a[] [noncitizen]."

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1 50. The text of § 1226 also explicitly applies to people charged as being inadmissible,
2 including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Just this year,
3 Congress enacted subparagraph (E) in the Laken Riley Act to exclude certain noncitizens who
4 entered without inspection from § 1226(a)'s default bond provision. Subparagraph (E)'s
5 reference to such people makes clear that, by default, such people are afforded a bond hearing
6 under subsection (a). As the *Rodriguez Vazquez* court explained, "[w]hen Congress creates
7 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the
8 statute generally applies." *Rodriguez Vazquez*, 779 F. Supp. 3d at 1257 (citing *Shady Grove*
9 *Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)); *see also Gomes*, 2025
10 WL 1869299, at *7.
11 51. Section 1226 therefore leaves no doubt that it applies to people who face charges
12 of being inadmissible to the United States, including those who are present without admission or
13 parole.
14 52. Under the BIA's interpretation, all noncitizens subject to inadmissibility grounds
15 are detained without the opportunity for a bond hearing under 8 U.S.C. § 1225(b). *Matter of*
16 *Yajure Hurtado*, 29 I&N Dec. at 220; *see* 8 U.S.C. § 1182(a)(6) (making people who are present
17 without having been admitted inadmissible); 8 U.S.C. § 1101(a)(14) (defining an admission).
18 Therefore, this interpretation would render all the grounds of mandatory detention in § 1226(c)
19 applying to inadmissible noncitizens, including the recently passed Laken Riley Act,
20 superfluous. *Gomes*, 2025 WL 1869299, at *7; *Rodriguez*, 779 F. Supp. 3d at 1258; *see Marx v.*
21 *Gen. Revenue Corp.*, 568 U.S. 371, 386 (2103) ("[T]he canon against surplusage is strongest
22 when an interpretation would render superfluous another part of the same statutory scheme.").
23 This statutory structure demonstrates that Congress did not intend to make § 1226(a)
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1 inapplicable to all inadmissible noncitizens, but rather viewed it as the default bond provision for
2 people arrested within the United States.

3 53. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who
4 recently entered the United States. The statute's entire framework is premised on inspections at
5 the border of people who are "seeking admission" to the United States. 8 U.S.C.
6 § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme
7 applies "at the Nation's borders and ports of entry, where the Government must determine
8 whether a[] [noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583
9 U.S. 281, 287 (2018).

10 54. The BIA's interpretation "would render the phrase 'seeking admission' in 8
11 U.S.C. § 1225(b)(2)(A) mere surplusage." *Lopez Benitez*, 2025 WL 2371588, at *6. That section
12 applies to people who are (1) applicants for admission; (2) seeking admission; and (3) not clearly
13 and beyond a doubt entitled to be admitted. 8 U.S.C. § 1225(b)(2)(A); *Lopez Benitez*, 2025 WL
14 2371588, at *6; *Diaz Martinez*, 2025 WL 2084238, at *2. The BIA's interpretation makes all
15 applicants for admission subject to mandatory detention, leaving the "seeking admission"
16 criterion unnecessary and violating the rule against surplusage. *Lopez Benitez*, 2025 WL
17 2371588, at *6; *Diaz Martinez*, 2025 WL 2084238, at *6.

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

22 56. Instead, the phrase "seeking admission" indicates that § 1225(b)(2)(A) applies to
23 people who are taking "some sort of present-tense action," in other words, coming or attempting
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1 to come into the United States. *Diaz Martinez*, 2025 WL 2084238, at *6; *see also Matter of M-C-*
2 *D-V-*, 28 I&N Dec. 18, 23 (BIA 2020) (stating that "the use of the present progressive tense . . .
3 denotes an ongoing process"). Therefore, § 1226(a), not § 1225(b)(2)(A), governs the detention
4 of people detained within the United States who are not actively seeking admission, as required
5 by the statute.

6 57. Applying § 1226(a), rather than § 1225(b), to people detained in the interior who
7 had previously entered without inspection is consistent with the government's longstanding
8 practice, which "can inform a court's determination of what the law is." *Loper Bright Enter. v.*
9 *Raimondo*, 603 U.S. 369, 386 (2024). This longstanding practice further counsels against the
10 BIA's abrupt change in policy. *Maldonado*, 2025 WL 2374411, at *11.

11 58. This petition is not affected by the recent class certification in *Maldonado*
12 *Bautista et al. v. Santacruz Jr et al.*, 5:25-cv-01873-SSS-BFM (C.D. Cal. Nov. 25, 2025).
13 *Maldonado Bautista* certified a class defined as: "[a]ll noncitizens in the United States without
14 lawful status who (1) have entered or will enter the United States without inspection; (2) were
15 not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention
16 under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland
17 Security makes an initial custody determination. *Id.* at *15. As Petitioner was apprehended at
18 the border, it does not appear that he is included in the class. Accordingly, Petitioner's only
19 relief remains this petition.

20 59. Finally, as discussed below, the BIA's interpretation of § 1225(b)(2)(A) to
21 mandate detention without a bond hearing for all noncitizens present in the United States without
22 having been admitted presents serious constitutional concerns. Therefore, to the degree that the
23 statute remains ambiguous, the Court should presume that Congress "did not intend the
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1 alternative which raises serious constitutional doubts" and reject that construction. *Clark v.*
2 *Martinez*, 543 U.S. 371, 381-82 (2005). Therefore, § 1226(a), which permits bond hearings, not
3 § 1225(b)(2)(A), which does not, governs the detention of people like Petitioner.

4 **II. Additionally, as a Previously Designated Unaccompanied Child, Respondent is Detained pursuant to 8 U.S.C. § 1226(a).**
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6 60. The Department of Health and Human Services (DHHS) has authority over the detention
7 of a non-citizen who enters the United States without inspection as an Unaccompanied Child
8 (UC). 8 U.S.C. § 1232(b)(1). DHHS should be notified within 48 hours of the "apprehension or
9 discovery of an unaccompanied alien child." 8 U.S.C. § 1232(b)(2). Upon such notification, the
10 federal department or agency "shall **transfer** the custody of such child to the Secretary of Health
11 and Human Services not later than 72 hours after determining that such child is an
12 unaccompanied alien child." 8 U.S.C. § 1232(b)(3) (emphasis added). The Trafficking Victims
13 Protection Reauthorization Act of 2008 (TVPRA) also confirms that, pursuant to 8 U.S.C. § 279,
14 "the care and custody of all unaccompanied alien children, including responsibility for their
15 detention, when appropriate, shall be the responsibility of the Secretary of Health and Human
16 Services." *United States: Trafficking Victims Protection Reauthorization Act of 2008*, Public
17 Law 110-457, 23 December 2008; 8 U.S.C. § 1232(b).
18 61. The statute also discusses the release of a UC from the custody of DHHS. The
19 decision to release a UC from DHHS's custody to the least restrictive setting, which is usually
20 release to the custody of a family member, must take into account the risk that the UC poses to
21 themself or the community, and the risk of flight. 8 U.S.C. § 1232(c)(2)(A). A UC who turns
22 eighteen years-old while in the custody of the DHHS must be transferred to the custody of the
23 Department of Homeland Security (DHS). 8 U.S.C. 1232(c)(2)(B). In determining the custody of
24 the now eighteen-year-old, the Secretary of the DHHS "shall consider placement in the least

1 restrictive setting available after taking into account the alien's danger to self, danger to the
2 community, and risk of flight." *Id.* The statute further provides that UCs who reach the age of
3 majority should also be able to receive alternatives to detention. *Id.* As such, the statute
4 concerning the detention and subsequent release of UCs from the custody of either DHHS or
5 DHS explicitly state that UCs, even once they turn eighteen years old, should be released from
6 custody when there is no danger to the community or risk of flight. This clearly demonstrates
7 that UCs, both under eighteen and over eighteen, are not subject to mandatory detention.
8 Furthermore, the Flores Settlement Agreement, states that "[a] minor in deportation proceedings
9 shall be afforded a bond redetermination hearing before an immigration judge in every case,
10 unless the minor indicates on the Notice of Custody Determination form that he or she refuses
11 such a hearing." *Flores v. Reno* Case Number CV 85-4544-RJK(Px).

12 62. Petitioner entered the United States as a UC on June 24, 2023 and was transferred
13 to DHHS's Office of Refugee Resettlement (ORR). Petitioner was approved for release from
14 ORR to the custody of his uncle in Kingston, NY approximately 1.5 months later. Although
15 Petitioner is no longer a minor (by about six months), his designation as a UC upon entry of the
16 United States is significant in any custody redetermination proceedings. Here, Petitioner entered
17 the United States only one time. He entered as a sixteen-year-old and was promptly classified as
18 a UC. Therefore, Petitioner's custody redetermination is governed by the statutes and regulations
19 establish for UCs.

20 63. Although Petitioner was released from ORR custody prior to his eighteenth
21 birthday, the Flores Settlement Agreement and 8 U.S.C 8 U.S.C. § 1232(c)(2)(B) clearly
22 demonstrate that should Petitioner have been in DHHS custody at his eighteenth birthday, he
23 would have been eligible to leave custody if he was not a risk of flight or danger to the
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community. This would have been effectuated through a custody redetermination hearing, the same proceedings in which Respondents have prevented Petitioner from seeking. If Petitioner would have been eligible for a custody redetermination hearing upon turning eighteen years old and transferring to DHS custody, it follows that Petitioner is still eligible for a custody redetermination hearing because Petitioner's initial manner of entrance into the United States, and his classification as a UC, governs the inquiry of eligibility for custody determination.

64. Thus, Petitioner is detained under § 1226(a) by the mere fact that he was re-detained in the interior of the United States roughly 2.5 years after his initial entry. That position is strengthened even further, however, by the fact that he was designated a UC at the time of his arrival and his detention is governed by the portion of the statute addressing Unaccompanied Children. The statute and regulations relating to UCs make it clear that those designated as UCs, even after they turn eighteen, are eligible for custody redetermination hearings.

III. The BIA's Application of Mandatory Detention to Noncitizens Like Petitioner Violates Substantive and Procedural Due Process

65. "It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings." *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" that the Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *see also id.* at 718 (Kennedy, J., dissenting) ("Liberty under the Due Process Clause includes protection against unlawful or arbitrary personal restraint or detention."). This fundamental due process protection applies to all noncitizens within the United States, including both removable and inadmissible

noncitizens. *See id.* at 693; *Plyler v. Doe*, 457 U.S. 202, 212 (1982); *Wong Wing v. United States*, 163 U.S. 228, 238 (1896).

66. Absent adequate procedural protections, substantive due process requires a "special justification" that "outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690; *accord, e.g.*, *Torralba v. Knight*, No. 2:25-cv-1366, 2025 WL 2581792, at *12 (D. Nev. Sept. 5, 2025) (describing the standard for a substantive due process violation); *Fernandez v. Lyons*, No. 8:25-cv-506, 2025 WL 2531539, at *4 (D. Neb. Sept. 3, 2025) (same). In the immigration context, the Supreme Court has recognized only two valid purposes for civil detention—to mitigate the risks of danger to the community and to prevent flight. *Id.*; *Demore*, 538 U.S. at 528. Thus, to withstand constitutional scrutiny, the nature and duration of mandatory immigration detention must be reasonably related to these purposes.

67. In *Demore*, the Supreme Court upheld the constitutionality of § 1226(c) against a facial challenge, specifically citing evidence that had been before Congress about noncitizens with criminal convictions. 538 U.S. at 518-520. This justification does not apply, however, to noncitizens with no criminal record whatsoever who have lived in the community for years. The broad policy set forth in *Matter of Yajure Hurtado* is not reasonably related to the purposes of prevent danger to the community or flight risk and violates substantive due process.

68. Additionally, procedural due process protects noncitizens against deprivation of liberty without adequate procedural protections, including notice and the opportunity to be heard. *A.A.R.P. v. Trump*, 145 S. Ct. 1364, 1367 (2025); *Trump v. J.G.G.*, 145 S. Ct. 1003, 1006 (2025); *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020). In determining the proper procedure to protect a detained noncitizen's procedural due process rights under the Fifth Amendment,

1 courts apply the three-part balancing test in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976),
2 weighing (1) "the private interest that will be affected by the official action;" (2) "the risk of an
3 erroneous deprivation of such interest through the procedures used, and the probable value, if
4 any, of additional or substitute procedural safeguards;" and (3) "the Government's interest,
5 including the function involved and the fiscal and administrative burdens that the additional or
6 substitute procedural requirement would entail." *Black v. Decker*, 103 F.4th 133, 147-48 (2d Cir.
7 2024); *Gayle v. Warden Monmouth C'ty Corr. Facility*, 12 F. 4th 321, 331 (3d Cir. 2021);
8 *Hernandez-Lara*, 10 F.4th at 28; *Velasco Lopez*, 978 F.3d at 851 (all quoting *Mathews*, 424 U.S.
9 at 335). Here, the BIA's interpretation of the statute to require detention of all people in the
10 United States without having been admitted deprives them of their liberty without any
11 individualized process to determine whether such detention is necessary to prevent flight risk or
12 danger to the community, and violates due process.

13 69. First, the "importance and fundamental nature" of an individual's liberty interest
14 is well-established. *United States v. Salerno*, 481 U.S. 739, 750 (1987); *see also Ashley*, 288 F.
15 Supp. at 670 ("[F]reedom from confinement is a liberty interest of the highest constitutional
16 import."). For people "who can face years of detention before resolution of their immigration
17 proceedings, 'the individual interest at stake is without doubt particularly important.'" *Linares*
18 *Martinez v. Decker*, No. 18-cv-6527 (JMF), 2018 WL 5023946 at *3 (S.D.N.Y. Oct. 17, 2018).

19 70. Weighing this factor in *Velasco Lopez*, the Second Circuit found the private
20 interest to be "on any calculus, substantial," observing that the petitioner, "could not maintain
21 employment or see his family or friends or others outside normal visiting hours. The use of a cell
22 phone was prohibited, and he had no access to the internet or email and limited access to the
23 telephone." 978 F.3d at 851-52. Similarly, the First Circuit found a substantial private liberty
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1 interest for the petitioner in *Hernandez-Lara*, noting that the petitioner there was incarcerated
2 "alongside criminal inmates" at a jail where "she was separated from her fiancé and unable to
3 maintain her employment." 10 F.4th at 28.

4 71. This interest should be given even more weight since Petitioner is barely 18 years
5 old and was designed a UC upon his arrival in the United States. Petitioner is separated from his
6 older brother and his uncle, and at 18 years old with no criminal record, is housed alongside
7 adult criminal inmates.

8 72. Second, absent release or any individualized bond hearing, people will be
9 detained despite not being a danger to the community or a flight risk, because there is no
10 mechanism to determine whether their detention is necessary. *See, e.g.*, *Günaydin v. Trump*, No.
11 25-cv-1151, 2025 WL 1459154, -- F. Supp. 3d --, at *8 (D. Minn. May 21, 2025) (noting that
12 lack of consideration of "individualized or particularized facts . . . increases the potential for
13 erroneous deprivation of individuals' private rights"); *Ashley*, 28 F. Supp. 2d at 670 (finding a
14 procedural due process violation because "the Government has not proved that Petitioner
15 presents an identified and articulable threat to an individual or the community so as to justify his
16 continued detention"). A bond hearing would have significant value because it is designed to
17 assess the individualized facts of each case and determine whether less restrictive measures can
18 fulfill the same goals.

19 73. Finally, the burden on the government of returning to the longstanding practice of
20 holding bond hearings for people like Petitioner does not outweigh the liberty interest at stake.
21 To the contrary, the government has an interest in "minimizing the enormous impact of
22 incarceration in cases where it serves no purpose." *Velasco Lopez*, 978 F.3d at 854; *see also*
23 *Hernandez-Lara*, 10 F.4th at 33 (noting that "limiting the use of detention to only those
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1 noncitizens who are dangerous or a flight risk may save the government, and therefore the
2 public, from expending substantial resources on needless detention"). Additionally, "unnecessary
3 detention imposes substantial societal costs. . . . The needless detention of those individuals thus
4 separates families and removes from the community breadwinners, caregivers, parents, siblings
5 and employees. Those ruptures in the fabric of communal life impact society in intangible ways
6 that are difficult to calculate in dollars and cents." *Hernandez-Lara*, 10 F.4th at 33 (citation and
7 internal quotation marks omitted). The cost to the government and society of detaining people
8 unnecessarily for long periods of time is greater than the cost of providing individualized
9 hearings, and weighs in favor of additional procedural protections.

10 74. At these bond hearings, due process requires that the Government bear the burden
11 of proof by clear and convincing evidence. *See Gayle*, 12 F.4th at 332 ("[W]hen such a severe
12 deprivation is at issue, the Government must bear the burden of proof."). "A standard of proof
13 serves to allocate the risk of error between the litigants and reflects the relative importance
14 attached to the ultimate decision." *German Santos v. Warden Pike C'ty Corr. Facility*, 965 F.3d
15 203, 213 (citing *Addington v. Texas*, 441 U.S. 418, 423 (1979)). Therefore, when the Third
16 Circuit has ordered a constitutionally required bond hearing, it is placed the burden on the
17 government by clear and convincing evidence. *German Santos*, 965 F.3d at 214; *Guerrero-*
18 *Sanchez v. Warden York C'ty Prison*, 905 F.3d 208, 224 & n.12 (3d Cir. 2018), *abrogated on*
19 *other grounds by Johnson v. Arteaga-Martinez*, 596 U.S. 572 (2022). Other circuit courts have
20 similarly held that due process requires this allocation of the burden in bond hearings for
21 noncitizens like petitioner, who were then detained under § 1226(a). *Hernandez-Lara*, 10 F.4th
22 at 39-40; *Velasco Lopez*, 978 F.3d at 855-56. Thus, even if the statute requires detention without
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1 a bond hearing, due process requires a hearing at which the government bears the burden by
2 clear and convincing evidence.

3 75. Once released from immigration custody, in this case ORR custody, due process
4 requires that a person like Petitioner receive a hearing before a neutral decisionmaker to
5 determine whether any re-detention is justified, and whether the person is a flight risk or danger
6 to the community.

7 76. Consistent with this principle, individuals released on parole or other forms of
8 conditional release have a liberty interest in their "continued liberty." *Morrissey v. Brewer*, 408
9 U.S. 471, 482 (1972).

10 77. Such liberty is protected by the Fifth Amendment because, "although
11 indeterminate, [it] includes many of the core values of unqualified liberty," such as the ability to
12 be gainfully employed and live with family, "and its termination inflicts a 'grievous loss' on the
13 [released individual] and often on others." *Id.*

14 78. To guarantee against arbitrary re-detention and to guarantee the right to liberty,
15 due process requires "adequate procedural protections" that ensure the government's asserted
16 justification for a noncitizen's physical confinement "outweighs the individual's constitutionally
17 protected interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690 (citation modified).

18 79. Due process thus guarantees notice and an individualized hearing before a neutral
19 arbitrator to assess danger or flight risk before the revocation of an individual's release.
20 *Goldberg v. Kelly*, 397 U.S. 254, 267 (1970) ("The fundamental requisite of due process of law
21 is the opportunity to be heard .... at a meaningful time in a meaningful manner." (citation
22 modified)); see also, e.g., Morrissey, 408 U.S. at 485 (requiring "preliminary hearing to
23 determine whether there is probable cause or reasonable ground to believe that the arrested
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1 parolee has committed … a violation of parole conditions" and that such determination be made
2 by someone not directly involved in the case." (citation modified)).

3 80. Several courts have recognized that these principles apply with respect to the re-
4 detention of the many noncitizens that DHS has begun taking back into custody, often after such
5 persons have been released for months and years.

6 81. In *E.A. T.-B.*, the district court in the Western District of Washington applied the
7 test set forth in *Mathews v. Eldridge* to hold that even in a case where the government argued
8 mandatory detention applied, a person's re-detention required a hearing and that the petitioner
9 had "undoubtedly [been] deprive[d] … of an established interest in his liberty." *E.A. T.-B. v.*
10 *Wamsley*, No. 25-cv-1192, 2025 WL 2402130, at *3 (W.D. Washington). The Court further
11 explained that even if detention was mandatory, the risk of erroneous deprivation of liberty
12 without a hearing was high because a hearing serves to ensure that the purposes of detention—
13 the prevention of danger and flight risk—are properly served. *Id.* at *4–5.

14 82. Finally, the Court explained that "the Government's interest in re-detaining non-
15 citizens previously released without a hearing is low: although it would have required the
16 expenditure of finite resources (money and time) to provide Petitioner notice and hearing on
17 [ISAP] violations before arresting and re-detaining him, those costs are far outweighed by the
18 risk of erroneous deprivation of the liberty interest at issue." *Id.* at *5. As a result, this Court
19 ordered the petitioner's immediate release. *Id.* at *6.

20 83. The decision in *E.A. T.-B.* is consistent with many other district court decisions
21 addressing similar situations. *See, e.g.*, *Valdez v. Joyce*, No. 25 CIV. 4627 (GBD), 2025 WL
22 1707737 (S.D.N.Y. June 18, 2025) (ordering immediate release due to lack of pre-deprivation
23 hearing); *Pinchi v. Noem*, --- F. Supp. 3d ---, No. 5:25-CV-05632-PCP, 2025 WL 2084921 (N.D.
24

Cal. July 24, 2025) (similar); *Maklad v. Murray*, No. 1:25-CV-00946 JLT SAB, 2025 WL 2299376 (E.D. Cal. Aug. 8, 2025) (similar); *Garcia v. Andrews*, No. 1:25-CV-01006 JLT SAB, 2025 WL 2420068 (E.D. Cal. Aug. 21, 2025) (similar); *Mata Velasquez v. Kurzdorfer*, --- F.Supp.3d ----, 2025 WL 1953796, *17 (W.D.N.Y. July 16, 2025) (detention of parolee without a reasoned explanation or changed circumstances and without a meaningful opportunity to be heard violates due process); *Rodriguez Cabrera v. Mattos*, 2025 WL 3072687 (D Nev. Nov. 3, 2025); *Fernandez Lopez v. Wofford*, 2025 WL 2959319, *4 (E.D. Ca. Oct. 17, 2025) (unpub) (finding a non-citizen granted parole at the border has a liberty interest in her conditional release and that such a parolee has a implicit right entitlement to remain at liberty if she complies with the conditions of her parole); *Noori v. Larose*, 2025 WL 2800149, *10 (S.D. Ca. Oct. 1, 2025) (unpub) (parolee developed a private interest in remaining free in the one year he has resided in the United States since entry); *Munoz Materano v. Arteta*, 2025 WL 2630826, *13 (S.D.N.Y. Sept. 12, 2025) (unpub); *Ramirez Tesara v. Wamsley*, --- F.Supp.3d ----, 2025 WL 2637663, *3 (W.D. Wash. Sept. 12, 2025) (finding that parolee's liberty interest did not expire with his parole agreement); *see also Y-Z-L-H- v. Bostock*, --- F.Supp.3d ----, 2025 WL 1898025, *14 (D. Ore. July 9, 2025) (finding detention of a parolee who had not completed his asylum process to be arbitrary and capricious and ordering immediate release).

84. The same framework and principles apply here and compel Petitioner's immediate release.

85. In Petitioner's case, immediate release is the necessary remedy. As a UC, he was released from ORR custody approximately two years ago to the care of his uncle. Even though he has now turned 18, the statute government the release of UCs still requires he be placed in the least restrictive setting and encourage alternatives to detention. Petitioner has already been

1 determined by DHHS not to be a danger to the community or a flight risk upon his release in
2 July 2023. On information and belief, the Petitioner has not violated the conditions of his
3 release, nor is there any indication he poses any danger to persons or property. Additionally, he
4 is gainfully employed at a landscaping company and further supported by his brother and uncle,
5 who will ensure his appearance at any future hearings.

6 86. If Respondents sought to re-detain Petitioner, the appropriate procedural process
7 was to seek a pre-deprivation hearing in which the government would bear the burden of proof to
8 show Petitioner is now a flight risk or a danger to the community. That did not occur, and rather
9 immigration agents randomly approached Petitioner for no apparent reason and began asking
10 him questions about his nationality. Therefore, an order of immediate release is the appropriate
11 remedy in this case. If this Honorable Court is not inclined to grant immediate release, the
12 Petitioner requests the Court order Petitioner be afforded a bond hearing in which the
13 government bears the burden in showing Petitioner is a danger to the community or a risk of
14 flight.

15

CLAIMS FOR RELIEF

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COUNT I
Violation of the INA

17

87. Petitioner incorporates by reference the allegations of fact set forth in the
18 preceding paragraphs.

19

88. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all
20 noncitizens residing in the United States who are subject to the grounds of inadmissibility. As
21 relevant here, it does not apply to Petitioner, who has been living in the United States since for
22 2.5 years prior to being apprehended and detained by Respondents on January 27, 2026.

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1 89. Respondents made a discretionary custody determination to release him from
2 immigration custody when he was first apprehended in June 2023. It is unclear whether that
3 release was pursuant to a grant of humanitarian parole or if his release was on his own
4 recognizance, but either way, Petitioner was found not to be a danger to the community or a
5 flight risk. Respondents now essentially seek to *ex post facto* redetermine the statute under
6 which they are detaining Petitioner based on ICE's July 8, 2025 policy change, that is at direct
7 odds with the plain language of the statute. They now argue that Petitioner is detained under §
8 1225(b)(2) despite previously making a custody determination to release him pursuant to their
9 authority under §1226(a) when releasing him from ORR custody.
10 90. Accordingly, Petitioner is detained under § 1226(a) and is eligible for immediate
11 release by this court, or in the alternative release on bond. The application of § 1225(b)(2) to
12 Petitioner unlawfully mandates his continued detention and violates the INA.
13 **COUNT II**
Violation of the Bond Regulations, 8 C.F.R. §§ 236.1, 1236.1, and 1003.19
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15 91. Petitioner incorporates by reference the allegations of fact set forth in preceding
paragraphs.
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17 92. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-
Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA.
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19 Specifically, under the heading of "Apprehension, Custody, and Detention of [Noncitizens]," the
agencies explained that "[d]espite being applicants for admission, [noncitizens] who are present
20
21 without having been admitted or paroled (formerly referred to as [noncitizens] who entered
without inspection) will be eligible for bond and bond redetermination." 62 Fed. Reg. at 10323
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23 (emphasis added). The agencies thus made clear that individuals who had entered without
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inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.

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

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

COUNT III
Violation of Substantive Due Process under the Fifth Amendment

95. Petitioner re-alleges and incorporates by reference the above paragraphs.

96. The Due Process Clause of the Fifth Amendment forbids the government from depriving any "person" of liberty "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). Substantive due process requires that immigration detention without a bond hearing be reasonably related to the goals of ensuring the appearance of noncitizens at future proceedings and preventing danger to the community. *Id.* at 690.

97. The BIA's application of mandatory detention under § 1225(b)(2) is not reasonably related to those goals and thus violates substantive due process. Petitioner is not a danger to the community or a flight risk. He has never been criminally arrested in the United States or abroad, he is gainfully employed at a landscaping company, and he only recently turned 18 years old, having entered the country as a UC. He is not a risk of flight, as he has created roots in his community, including becoming a valued member of the company for whom he works.

98. On information and belief, since being released from ORR custody, he has never failed to appear for any scheduled immigration appointments or court hearings that were scheduled. Since Petitioner is neither a risk of flight nor a danger to the community, his continued detention is not reasonably related to the only two goals of civil immigration detention. *Zadvydas*, 533 U.S. at 690.

COUNT IV
Violation of Procedural Due Process under the Fifth Amendment

99. Petitioner re-alleges and incorporates by reference the above paragraphs.

100. The Due Process Clause of the Fifth Amendment forbids the government from depriving any "person" of liberty "without due process of law." U.S. Const. amend. V. Courts apply the *Mathews v. Eldridge* balancing test to determine what procedures the due process clause requires. *Gayle*, 12 F.4th at 331.

101. The first factor is the private interest that will be affected by the official action. *Id.* Here, the deprivation of Petitioner's liberty is a particularly weighty interest. It is well established that individuals have a liberty interest in their continued liberty and freedom from restraint. *Salerno*, 481 U.S. at 750; *see also Ashley*, 288 F. Supp. at 670. This is especially true given the fact that Petitioner was already determined to not be a danger to the community or a risk of flight when he was initially released from ORR custody to the care of his uncle. He relied on this interest in his liberty by finding gainful employment, eventually renting a house to live in, and becoming a value member of his community. This freedom from unlawful restraint is the heart of the liberty interest protected by the Fifth Amendment.

102. The second factor is the risk of erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional safeguards. *Id.* Here, there is a great risk of unnecessary detention because the BIA's interpretation of the statute does not

permit any individualized determination of whether detention during removal proceedings is necessary. *See Ashley*, 288 F. Supp. 2d at 670. At a hearing, Petitioner could show that his detention is not necessary because he is not a danger to the community and is not a flight risk. He is only 18 years old, has never been criminally arrested in the United States and there is no indication he possesses any danger at all to the community. As described throughout this petition, Petitioner has created ties to his community in the United States and is a hardworking young man who is gainfully employed. He has viable relief from removal in the form of SIJS and thus has every incentive to appear at all future hearings scheduled. There is no indication in the record that he is a risk of flight. A hearing at which the government bears the burden of proof by clear and convincing evidence would protect the substantial liberty interest at stake. *German Santos*, 965 F.3d at 213-14.

103. The final factor is the Government's interest. *Gayle*, 12 F.4th at 331. The government has no legitimate interest in detaining Petitioner when detention is not necessary to ensure appearance at future hearings or protect the community, and less restrictive measures like a reasonable bond would serve those purposes. *Hernandez-Lara*, 10 F.4th at 32-33; *see Ousman D. v. Decker*, No. 20-9646, 2020 WL 5587441, at *4 (holding that due process requires consideration of less restrictive alternatives to detention that would address the government's legitimate purpose); *Hechavarria v. Whitaker*, 358 F. Supp. 3d 227, 241-42 (W.D.N.Y. 2019) (same). Therefore, the government does not have an interest in detaining Petitioner without a bond hearing that outweighs his substantial liberty interest in such an individualized determination.

104. Due process does not permit the government to strip Petitioner of his liberty without written notice and a hearing before a neutral decisionmaker to determine whether re-

1 detention is warranted based on danger or flight risk. *See Morrissey*, 408 U.S. at 487–88. Such
2 written notice and a hearing must occur ***prior*** to any re-detention.

3 105. Respondents revoked Petitioner's release and deprived him of liberty without
4 providing him aby written notice or meaningful opportunity to be heard by neutral
5 decisionmaker prior to his re-detention.

6 106. Accordingly, Petitioner's re-detention without any hearing to determine whether
7 that detention is necessary violates the Due Process clause of the Fifth Amendment and the
8 appropriate remedy is immediate release from detention.

9 **PRAYER FOR RELIEF**

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

11 a. Assume jurisdiction over this matter;

12 b. Order that Petitioner shall not be transferred outside the Eastern District of
13 Pennsylvania while this habeas petition is pending;

14 c. Issue an Order to Show Cause ordering Respondents to show cause why this
15 Petition should not be granted within three days;

16 d. Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner or, in
17 the alternative, provide Petitioner with a bond hearing pursuant to 8 U.S.C. §
18 1226(a) within seven days, in which the government bears the burden in showing
19 Petitioner is a danger to the community or risk of flight;

20 e. Declare that Petitioner is detained pursuant to 8 U.S.C. § 1226(a);

21 f. Declare that Petitioner's detention is unlawful;

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1 g. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act
2 ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under
3 law; and
4 h. Grant any other and further relief that this Court deems just and proper.
5
DATED this 28th of January 2026.
6

7 /s/ Taylor S. Adams
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IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF PENNSYLVANIA

OSWALDO NICOLAS CAAL-CAAL	
v.	Case No. 2:26-cv-00556
ROSE, ET AL.	**PETITION FOR WRIT OF HABEAS CORPUS**

EXHIBIT LIST

Exhibit		**Page**
A.	Printout of ICE Detainee Locators, evincing Petitioner is housed at the Federal Detention Center in Philadelphia, PA;	1
B.	Appendix of District Court Cases having heard this issue.	2-15