UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

Eli Vigil Claros, Petitioner, v. Jessica SAGE, Warden of FCI Lewisburg; Michael T. ROSE, Acting Director of Enforcement and Removal Operations Philadelphia Field Office of U.S. Immigration and Customs Enforcement; Kristi NOEM, Secretary of the U.S. Department of Homeland Security; and Pamela BONDI, Attorney General of the United States, in their official capacities, Respondents.	Case No. _____ **VERIFIED PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT**

PRELIMINARY STATEMENT

Petitioner Eli Vigil Claros ("Mr. Vigil Claros") is a 26-year-old [redacted] and resident of Suffolk County, New York. He previously spent 16 months in the custody of Immigration and Customs Enforcement ("ICE"), including almost all of 2020, due to false allegations of [redacted] In custody, he contracted COVID-19 and was diagnosed with Post Traumatic Stress Disorder and Major Depressive Disorder with anxious distress. Finally released on bond—after an Immigration Judge ("IJ") explicitly found that [redacted]—he is now again in ICE custody, this time pursuant to the Board of Immigration Appeals decision *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). That decision, as hundreds of district court judges have determined, is incorrect. Accordingly, Mr. Vigil Claros requests that this Court grant this petition and order his immediate release.

JURISDICTION AND VENUE

1. This action arises under the Constitution of the United States, the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et seq.*, and the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 701-706.

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

3. Mr. Vigil Claros is in custody for the purposes of habeas jurisdiction because he is subject to restraints on his liberty not imposed on the general public. *Hensley v. Municipal Court*, 411 U.S. 345, 348–49 (1973); *Rumsfeld v. Padilla*, 542 U.S. 426, 437 & n.10 (2004); *Nowakowski v. New York*, 835 F.3d 210, 215-16 (2d Cir. 2016). Petitioner is in the physical custody of Respondents. *See* Ex. 10 (ICE Detainee Locator).

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

5. Venue is proper in this District because Mr. Vigil Claros is detained at FCI Lewisburg in Union County, located in the Middle District of Pennsylvania. 28 U.S.C. § 1391; *Rumsfeld*, 542 U.S. at 442. *See also* Ex. 10 (ICE Detainee Locator).

6. As the Department of Justice has recently confirmed, the Third Circuit's recent decision in *Khalil v. President, United States of America*, 2026 WL 111933 (3d Cir. Jan. 15, 2026) does not strip subject matter jurisdiction over habeas claims of unlawful detention under 8 U.S.C. § 1225(b). *See* Ex. 9 (DOJ Letter to D.N.J. Judge Farbiarz re Effect of Khalil). *Khalil* dealt with a legal challenge that could have been brought via a Petition for Review of a final order of removal.

Khalil, 2026 WL 111933, at *8. Conversely, this matter is entirely a challenge to the Respondents' authority to detain Mr. Vigil, which is collateral to the removal process and cannot be brought though a PFR. *See id.* at *12.

REQUIREMENTS OF 28 U.S.C. § 2243

7. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, Respondents must file a return "within *three days* unless for good cause additional time, not exceeding twenty days, is allowed." *Id.* (emphasis added).

8. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

PARTIES

9. Petitioner Mr. Vigil Claros is an asylum applicant who has been in immigration detention since September 4, 2025. ICE did not set bond and he is unable to obtain review of his custody by an IJ, pursuant to the Board of Immigration Appeals' ("BIA") decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). Mr. Vigil Claros is in the custody and under the direct control of Respondents and their agents.

10. Respondent Jessica Sage Warden of the Lewisburg Federal Correctional Institution manages the day-to-day operations of facility, and as such is Mr. Vigil Claros' immediate custodian. Petitioner brings this action against Respondent Warden in her official capacity.

11. Respondent Michael T. Rose is the Acting Field Office Director of the ICE Enforcement and Removal Operations ("ERO") Philadelphia Field Office. In that capacity, he is charged with overseeing all ICE detention centers in Pennsylvania, Delaware, and West Virginia

and has the authority to make custody determinations regarding individuals detained there. Respondent Rose is a legal custodian of Petitioner. Petitioner brings this action against Respondent Rose in his official capacity.

12. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the INA, and oversees ICE, which is responsible for Petitioner's detention. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

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

EXHAUSTION OF ADMINISTRATIVE REMEDIES

14. There is no statutory requirement of exhaustion of administrative remedies where a noncitizen challenges the lawfulness of his detention. *Arango Marquez v. I.N.S.*, 346 F.3d 892, 897 (9th Cir. 2003). Any requirement of administrative exhaustion is therefore purely discretionary. *See S v. Lowe*, No. 1:18-cv-1553, 2020 WL 4530728, at *2 (M.D. Pa. Aug. 2020) ("[T]he exhaustion requirement imposed by courts relating to habeas corpus petitions filed by immigration detainees is a prudential benchmark which is not compelled by statute.").

15. Prudential exhaustion is not warranted here, given the need for immediate judicial review. "Where a person is detained by executive order . . . the need for collateral review is most pressing. . . . In this context the need for habeas corpus is more urgent." *Boumediene v. Bush*, 553 U.S. 723, 783 (2008) (waiving administrative exhaustion for executive detainees).

16. Moreover, the exhaustion "doctrine is not without exception." *Ashley v. Ridge*, 288 F. Supp. 2d 662, 666 (D.N.J. 2003). "Courts have found that the exhaustion of administrative remedies may not be required when available remedies provide no opportunity for adequate relief, an administrative appeal would be futile, or if plaintiff has raised a substantial constitutional question." *Id.* at 666–67.

17. The BIA has issued a published decision holding that people like Mr. Vigil Claros who entered the United States without inspection are ineligible for bond pursuant to 8 U.S.C. § 1225(b)(2)(A). *See Matter of Yajure Hurtado*, 29 I&N Dec. at 216. IJs and the BIA are bound by this decision. 8 C.F.R. § 1003.1(g)(1).[1] Exhaustion before the agency would therefore be futile.

18. Further, neither IJ nor the BIA have jurisdiction to adjudicate constitutional issues. *Qatanani v. Att'y Gen. of the U.S.*, 144 F.4th 485, 500 (3d Cir. 2025); *see also Ashley*, 288 F. Supp. 2d at 667. Therefore, administrative proceedings would be futile as petitioner raises due process claims. *Qatanani*, 144 F.4th at 500; *see also Contreras Maldonado v. Cabezas*, No. 25-13004, 2025 WL 2985256, at *6 (D.N.J. Oct. 23, 2025) (waiving exhaustion where BIA could not provide petitioner with relief on due process claim where there was "no doubt that [she] was not afforded an individualized assessment before she was detained").

LEGAL FRAMEWORK

I. Immigration Detention

19. Civil immigration detention is only authorized for specific, non-punitive purposes. *See Denmore v. Kim*, 538 U.S. 510, 528 (2003); *Zadvydas v. Davis,* 533 U.S. 678, 690 (2001); *Jennings v. Rodriguez*, 583 U.S. 281, 286 (2018).

[1] While *Maldonado Bautista* class members are currently exempt from such treatment pursuant to nationwide injunction, Petitioner does not purport to be a Maldonado Bautista class member. *See Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (C.D. Cal.).

20. The INA contains several provisions authorizing detention of noncitizens. Section 1226(a) entitles most noncitizens with pending removal proceedings to a hearing before an IJ to determine whether they should be released on bond. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d). Section 1226(c) creates an exception to section 1226(a) and provides that noncitizens who are removable by virtue of certain criminal convictions must be detained without a bond hearing. Section 1225(b) provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals "seeking admission" under (b)(2). Finally, section 1231 governs the detention of noncitizens with a final order of removal.

21. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104-–208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section 1226(a) was most recently amended last year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025). "Upon passing IIRIRA, Congress declared that the new Section 1226(a) 'restates the current provisions in the predecessor statute,'" which allowed noncitizens who entered without inspection to be released on bond. *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239, 1260 (W.D. Wash. 2025) (citing H.R. Rep. No. 104-469, pt. 1, at 229; H.R. Rep. No. 104-828, at 210).

22. Following the 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, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination.").

23. Thus, in the decades that followed, most people who entered without inspection were considered eligible for release on bond and for bond hearings before an IJ, unless their criminal history rendered them ineligible. *Diaz Martinez v. Hyde*, 792 F. Supp. 3d 211, 217 (D. Mass. 2025); *accord Rivera Zumba v. Bondi*, 2025 WL 2753496, at *9 (D.N.J. Sept. 26, 2025). That was consistent with pre-IIRIRA practice, in which noncitizens who had entered without inspection were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994).

24. Respondents have abruptly changed course. On May 15, 2025, the BIA issued a decision holding that any noncitizen who entered without inspection and was apprehended and paroled near the border was subject to mandatory detention under § 1225(b)(2)(A) when parole was terminated. *Matter of Q. Li*, 29 I&N Dec. 66, 70 (BIA 2025).

25. On July 8, 2025, ICE Director Todd M. Lyons issued an internal memorandum stating that, "in coordination with the Department of Justice (DOJ)," DHS had "revisited" its legal position and believed that § 1225, not § 1226, governs the detention of noncitizens who are present in the United States without having been admitted. *Diaz Martinez*, 792 F. Supp. 3d at 218.

26. On September 5, 2025, the BIA followed suit and issued a precedential decision in *Matter of Yajure Hurtado*, 29 I&N Dec. at 216. The BIA held that noncitizens "who are present in the United States without admission are applicants for admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings." 29 I&N Dec. at 220.

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

28. Even before ICE or the BIA introduced these nationwide policies, IJs in the Tacoma, Washington immigration court stopped providing bond hearings for persons who entered the United States without inspection and who have since resided here. There, the U.S. District Court in the Western District of Washington found that such a reading of the INA is unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. *See Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025).

29. Subsequently, the overwhelming majority of district courts across the United States have adopted the same reading of the INA's detention authorities as the *Rodriguez Vazquez* court and rejected ICE and EOIR's new interpretation. *See, e.g.*, *Demirel v. Fed. Det. Ctr.*, No. 25-5488, 2025 WL 3218243 (E.D. Pa. Nov. 18, 2025), at *1 (observing that 282 of the 288 district court decisions, prior to November 18, 2025, rejected the proposition that all noncitizens are subject to mandatory detention under 8 U.S.C. § 1225 and granted petitions for release).

30. A judge of this Court has also rejected *Yajure Hurtado* agreeing with the majority of district courts nationwide. *See Santana-Rivas v. Warden of Cliton Cty. Corr. Fac.*, 3:25-cv-01896, 2025 WL 3513152, at *3 (M.D. Pa. Dec. 8, 2025) (adopting in part the Report and Recommendation and rejecting the *Yajure Hurtado* holding).

31. Put simply, courts have overwhelmingly rejected DHS's and EOIR's new interpretation because it blatantly defies the INA. The plain language of § 1225(b)(2), read in context of the INA's statutory scheme, "demonstrates that an 'applicant for admission' who is 'seeking admission' refers to a noncitizen arriving in the country, not one who has resided in the country for an extended period." *Yilmaz v. Fed. Det. Ctr. Phila.*, No. 2:2025cv06572, 2025 WL 3459484, at *5 (E.D. Pa. Dec. 2, 2025). Rather, the detention of those, like Petitioner, who have resided in the United States is governed by § 1226(a), in accordance with "the titles of those

provisions, past agency practice, the rule against superfluity, and the canon of constitutional avoidance." *Id.*

32. Section 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." *See Jennings*, 583 U.S. at 288 (describing 1226(a) as the "default rule" for people detained pending removal). These removal hearings are held under Section 1229a, to "decid[e] the inadmissibility or deportability of a[] [noncitizen]." 8 U.S.C. § 1229a.

33. Section 1226 explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Just this year, Congress enacted subparagraph (E) in the Laken Riley Act to exclude certain noncitizens who entered without inspection from § 1226(a)'s default bond provision. Subparagraph (E)'s reference to persons inadmissible under § 1182(6)(A), i.e., persons inadmissible for entering without inspection, makes clear that, by default, such people are afforded a bond hearing under subsection (a). As the *Rodriguez Vazquez* court explained, "[w]hen Congress creates "specific exceptions" to a statute's applicability, it "proves" that absent those exceptions, the statute generally applies. 779 F. Supp. 3d at 1256–57 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

34. Under the BIA's interpretation, all noncitizens subject to inadmissibility grounds are detained without the opportunity for a bond hearing under 8 U.S.C. § 1225(b). *Matter of Yajure Hurtado*, 29 I&N Dec. at 220; *see* 8 U.S.C. § 1182(a)(6) (making people who are present without having been admitted inadmissible); 8 U.S.C. § 1101(a)(13) (defining an admission). This interpretation would render all the grounds of mandatory detention in § 1226(c) applying to inadmissible noncitizens, including the recently-passed Laken Riley Act, superfluous. *Gomes v.*

Hyde, No. 25-cv-11571, 2025 WL 1869299, at *7 (D. Mass. July 7, 2025); *Rodriguez Vazquez*, 779 F. Supp. 3d at 1258; *see Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 386 (2013) ("[T]he canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme."). This statutory structure demonstrates that Congress did not intend to make § 1226(a) inapplicable to all inadmissible noncitizens but rather viewed it as the default provision for people arrested within the United States.

35. By contrast, § 1225(b) 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); *see also Diaz Martinez*, 792 F. Supp. 3d at 222 ("'[O]ur immigration laws have long made a distinction between those [noncitizens] who have come to our shores seeking admission . . . and those who are within the United States after an entry, irrespective of its legality.'" (quoting *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958))). Indeed, the Supreme Court has explained that this mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible." *Jennings*, 583 U.S. at 287 (2018).

36. The BIA's interpretation "would render the phrase 'seeking admission' in 8 U.S.C. § 1225(b)(2)(A) mere surplusage." *Lopez Benitez*, 795 F. Supp. 3d at 487. That section applies to people who are (1) applicants for admission; (2) seeking admission; and (3) not clearly and beyond a doubt entitled to be admitted. 8 U.S.C. § 1225(b)(2)(A); *Lopez Benitez*, 795 F. Supp. 3d at 487-88; *Diaz Martinez*, 792 F. Supp. 3d at 218. The BIA's interpretation makes all applicants for admission subject to mandatory detention, leaving the "seeking admission" criterion unnecessary and violating the rule against surplusage. *Lopez Benitez*, 795 F. Supp. 3d at 488; *Diaz Martinez*, 792 F.3d at 218.

37. Instead, the phrase "seeking admission" indicates that § 1225(b)(2)(A) applies to people who are taking "some sort of present-tense action," in other words, coming or attempting to come into the United States. *Diaz Martinez*, 792 F.3d at 218; *see also Matter of M-C-D-V-*, 28 I&N Dec. 18, 23 (BIA 2020) (stating that "the use of the present progressive tense . . . denotes an ongoing process"). Therefore, § 1226(a), not § 1225(b)(2)(A), governs the detention of people detained within the United States who are not actively seeking admission, as required by the statute. *See Rivera Zumba*, 2025 WL 2753496, at *8.

38. Applying § 1226(a), rather than § 1225(b), to people who entered without inspection is consistent with the government's contemporaneous and previously consistent understanding of the statute, which "can inform a court's determination of what the law is." *Loper Bright Enter. v. Raimondo*, 603 U.S. 369, 386 (2024). This longstanding practice further counsels against the BIA's abrupt change in policy. *Maldonado*, 795 F. Supp. 3d at 1150.

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

40. According to the BIA, "where a previous bond determination has been made by an IJ, no change should be made by [DHS] absent a change of circumstance." *Matter of Sugay*, 17 I.&N. Dec 637, 640 (BIA 1981).

41. DHS has a longstanding practice of only re-arresting after a material change in circumstance. *See Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017); *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018) (discussing government counsel's representations regarding DHS's practice).

FACTS OF THE CASE

42. On approximately August 14, 2018, Mr. Vigil Claros entered the United States without inspection after fleeing El Salvador. He passed a credible fear interview and was issued a notice to appear for proceedings in immigration court. ICE determined that he was held under 8 U.S.C. § 1226(a) before issuing him a $1,500 ICE bond and releasing him on October 2, 2018. *See* Ex.s 1-2 (ICE Custody Determination and Bond Receipt).

43. Mr. Vigil Claros settled in Suffolk County, New York. His sister and her children lived nearby. [redacted] and a job in construction.

44. When he appeared in immigration court on August 23, 2019, he was abruptly detained by ICE. [redacted] While there was no dispute that he was detained pursuant to 8 U.S.C. § 1226(a) at that point, [redacted] Subsequent IJ bond hearings, during which he had the burden, and ICE release requests were unsuccessful. Mr. Vigil Claros maintained that [redacted] were central to why he fled El Salvador to begin with.

45. Mr. Vigil Claros struggled while in custody as the months wore on. He contracted COVID-19 and was diagnosed with Post Traumatic Stress Disorder and Major Depressive Disorder with anxious distress. *See* Ex. 3 (Evaluation and Medical Records).

46. In late 2020, Mr. Vigil Claros was fully heard on the merits of his applications for asylum, withholding of removal under the INA, and protection under the Convention Against Torture. While denying relief on unrelated issues,[2] the IJ made specific factual findings about the

[redacted]

47. While Mr. Vigil Claros appealed the merits decision to the BIA, he also sought a redetermination of his custody in light of the IJ's finding. On December 21, 2020—nearly sixteen months since after he has been detained—an IJ found that he was not a danger, nor was he a flight risk, and released him on a $12,500 bond. *See* Ex. 4-5 (IJ Bond Grant and Decision). He was released on December 23, 2020 and the IJ's decision was issued January 12, 2021. *Id.* ICE appealed the bond award, and the BIA dismissed that appeal on May 16, 2025. *See* Ex. 6 (BIA Bond Appeal Dismissal). Mr. Vigil Claros' appeal regarding the merits of his case remains pending at the BIA.[3]

48. On information and belief, on September 4, 2025, Mr. Vigil Claros was driving in Suffolk County, New York, when he was stopped by the police. He has lived in Suffolk County, save his time in ICE custody, since 2018. The officer asked questions unrelated to a traffic stop, including what he had done in his country and how many people he had killed. Mr. Vigil Claros was put in the back of the patrol car and taken to the precinct where he was told that ICE was

[redacted] but not "torture." Mr. Vigil Claros has appealed the decision to the BIA and his appeal remains pending.

[3] Mr. Vigil Claros has also filed a motion to remand, which is also still pending at the Board.

coming for him. He was not provided with any explanation for why he was being arrested and later learned that he had been accused of various traffic offenses.

49. On information and belief, ICE then collected Mr. Vigil Claros up at the precinct and took him to a processing facility in Central Islip. He tried to explain that he had been released on an IJ bond but was not provided with a reason for his re-detention. He was transferred to the Nassau County Jail in New York, then the Moshannon Valley Processing Center, and finally FCI Lewisburg, both in Pennsylvania.

50. ICE produced Mr. Vigil Claros to Suffolk County Court to be arraigned on the traffic offense charges he was issued on September 4, 2025. However, all charges were later dropped by the Nassau County District Attorney's Office.

51. He is currently in the jurisdiction of the Middle District of Pennsylvania, and now under the supervision of the Philadelphia Field Office of ICE. *See* Ex. 10 (ICE Detainee Locator).

52. Counsel has requested that Mr. Vigil Claros be returned to the either the Eastern or Southern Districts of New York pursuant to the *Orantes-Hernandez* settlement agreement. Mr. Vigil Claros has yet to be returned to counsel in New York and received no response to the request. *See* 2:28-cv-01107-MMM-VBK, Doc. 855 at ¶ 11.b. (C.D. Cal. Nov. 26, 2007); Ex. 7 (Communication with Deportation Officer regarding *Orantes*).[4]

[4] In 1982, a class action lawsuit was filed to stop the federal government from coercing Salvadoran nationals into abandoning their asylum rights while in immigration detention. A permanent injunction was entered, which has been subsequently modified – most recently on November 26, 2007. It provides inter alia that "venue shall remain in the district where class member's counsel is located" and provides for return "to the district in which venue is set sufficiently in advance of any proceeding in order to allow the detainee adequate time to consult with counsel." *Orantes-Hernandez et al vs. Gonzalez*, 2:28-cv-01107-MMM-VBK, Doc. 855 at ¶ 11.b. (C.D. Cal. Nov. 26, 2007).

53. Mr. Vigil Claros is neither a flight risk nor a danger to the community, as an IJ has previously determined. Nor has he ever been. Yet to date, he has spent a total of 21 months and counting in ICE custody.

54. Pursuant to *Matter of Yajure Hurtado*, the IJ is unable to consider Mr. Vigil Claros' bond request, a position with which ICE concurs. *See* Ex. 8 (OPLA Position Mandatory Detention). ICE has denied all prior release requests.

55. As a result, Mr. Vigil Claros remains in detention. Without relief from this Court, he faces the prospect of additional months, or even years, in immigration custody, separated from his family and community.

56. District courts throughout the country are finding that the appropriate remedy for similarly situated petitioners, who Respondents erroneously insist are detained under INA § 1225(b), is immediate release. *Tinoco Pineda v. Noem*, No. 5:25-CV-01518-XR, 2025 WL 3471418, at *6 (W.D. Tex. Dec. 2, 2025) ("Because Petitioner cannot be detained under § 1225(b), the remaining option is § 1226. Respondents do not claim that Petitioner's current detention is under § 1226. In fact, they assert that the only relief available to her is release from custody. As such, the Court sees no reason to consider' § 1226 as a basis for Petitioner's current detention.") (citation and internal quotation marks omitted); *Alejandro v. Olson*, No. 1:25-CV-02027-JPH-MKK, 2025 WL 2896348, at *9 (S.D. Ind. Oct. 11, 2025) ("Given that Respondents do not assert any other [statutory] basis for Mr. Alejandro's detention and do not argue that he presents a flight risk or danger, the appropriate remedy is his immediate release"); *Lepe v. Andrews*, No. 25-cv-01163, 2025 WL 2716910, at *10 (E.D. Cal. Sept. 23, 2025) (same); *see also Guaman Lliguicota v. Cabezas*, No. 25-17126, 2025 WL 3496300, at *2 (D.N.J. Dec. 5, 2025); *Gonzalez Mateo v. Noem*, 4:25-cv-00192, 2025 WL 3499062, at *7 (W.D. Ky. Dec. 5, 2025); *Morocho v. Jamison*,

No. 5:25-cv-05930, 2025 WL 3296300, at *3 (E.D. Pa. Nov. 26, 2025); *Singh v. Lewis*, No. 4:25-cv-133-DJH, 2025 WL 3298080, at *6 (W.D. Ky. Nov. 26, 2025); *Aguilar v. Bondi*, No. 5:25-CV-01453-JKP, 2025 WL 3471417, at *6 (W.D. Tex. Nov. 26, 2025); *Soto v. Soto*, No. 25-cv-16200, 2025 WL 2976572, at *9 (D.N.J. Oct. 22, 2025); *Diaz Martinez v. Hyde*, 792 F. Supp. 3d at 223 n. 23.

57. That is all the more warranted in this situation, where Mr. Vigil Claros was already afforded a bond hearing under § 1226(a) and the IJ and BIA agreed that release on money bond was justified.

58. Alternatively, § 1226(a) and due process require that DHS prove by clear and convincing evidence that Mr. Vigil Claros' continued detention is warranted at a bond hearing.

59. Although 8 U.S.C. § 1226(a) is silent as to which party carries the burden of proof, the statutory context and legislative history of that provision demonstrate that DHS properly bears the burden of justifying a noncitizen's continued detention, and *Matter of Guerra*, 24 I&N Dec. 37, 38 (BIA 2006) (placing the burden on the respondent), is an impermissible interpretation of the statute.

60. First, had Congress wanted noncitizens to bear the burden of proof in bond hearings pursuant to 8 U.S.C. § 1226(a) it would have expressly said so—as it did in another subsection of § 1226. *See* § 1226(c)(2) ("The Attorney General may release a[] [noncitizen]" subject to mandatory detention if release is (1) "necessary to provide protection to a witness . . ." and (2) "the [noncitizen] satisfies the Attorney General that the [noncitizen] will not pose a danger to the safety of other person or of property and is likely to appear for any scheduled proceedings") (emphasis added). "Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and

purposely in the disparate inclusion or exclusion." *Nken v. Holder*, 556 U.S. 418, 430 (2009) (quoting *INS v. Cardoza-Fonseca*, 480 U.S. 421, 432 (1987)). This is "particularly true" in instances—like here—when Congress enacts a statute "as part of a unified overhaul" of the prior law. *Id.* at 430–31. Congress enacted all of § 1226 at the same time, in 1996. *See Demore*, 538 U.S. at 521 (describing "wholesale reform" of immigration laws as including enactment of § 1226). Nonetheless, § 1226(a) is silent as to the burden of proof, while § 1226(c)(2) squarely places the burden on noncitizens to establish that their release is proper. Congress' failure to expressly require noncitizens to carry the burden in bond hearings under § 1226(a) when it overhauled the INA indicates that placing the burden on non-criminal detained noncitizens contravenes congressional intent.[5]

61. Second, maxims of statutory construction dictate that "Congress is presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it re-enacts a statute without change." *Lorillard v. Pons*, 434 U.S. 575, 580 (1978). That canon applies here: Congress, in replacing former 8 U.S.C. § 1252(a)(1) with § 1226(a), made no meaningful changes to the language of the original statute and thus preserved the presumption against detention that existed at the time. *See Matter of Patel*, 15 I&N Dec. 666, 666 (BIA 1976) (articulating that an immigrant "generally is not and should not be detained or required to post bond except on a finding that he is a threat to the national security or that he is a poor bail risk")

[5] *Jennings* does not foreclose Petitioner's argument that DHS should bear the burden under §1226(a). The Court was not squarely presented with this issue. *See generally Jennings*, 138 S. Ct. 830. Rather, the Court's analysis was limited to whether the canon of constitutional avoidance supported an interpretation of § 1226(a) requiring periodic bond hearings every six months at which DHS carried the burden by clear and convincing evidence. 138 S.Ct. at 847-48. Petitioner does not argue that a proper reading of the statute requires a clear and convincing evidentiary standard, merely that Congress intended to place the burden on the government. As discussed *infra*, Petitioner's argument that a specific evidentiary standard applies in § 1226(a) hearings is rooted in due process, not statutory interpretation.

(internal citations omitted); *see also Matter of Andrade*, 19 I&N Dec. 488, 489 (BIA 1987); *Matter of Spiliopoulos*, 16 I&N Dec. 561, 563 (BIA 1978).

62. Further, Courts apply the *Mathew v. Eldridge* balancing test to determine the proper procedure to protect a detained noncitizen's procedural due process rights under the Fifth Amendment. *Gayle v. Warden Monmouth Cty. Corr. Facility*, 12 F.4th 321, 331 (3d Cir. 2021). Each of the *Mathews* factors weighs in favor of allocating the burden to the DHS at Mr. Vigil Claros' § 1226(a) bond hearing.

63. First, the "importance and fundamental nature" of an individual's liberty interest is well-established. *See United States v. Salerno,* 481 U.S. 739, 750 (1987). When "such a severe deprivation is at issue, the Government must bear the burden of proof." *Gayle*, 12 F.4th at 332.

64. Second, the risk that a noncitizen will be erroneously deprived of his freedom is significant under current bond procedures. People like Mr. Vigil Claros who seek bond pursuant to § 1226(a) must provide evidence to the IJ addressing a number of specified factors. *See Guerra*, 24 I&N Dec. at 40 (listing required evidence including criminal and immigration records, address history, length of residence, and family ties). Requiring detained individuals to obtain this evidence—particularly records from other government agencies—is extremely onerous. Barriers such as indigence, language and cultural barriers, limited education, and mental health issues often associated with past persecution or abuse complicate the ability to obtain such records. Moreover, the mere fact of detention, often in county jails or for-profit prisons located miles from an individual's community, presents a significant obstacle to accessing the outside world. *See Moncrieffe v. Holder*, 569 U.S. 184, 201 (2013) (noting that people in immigration detention "have little ability to collect evidence").

65. As the Second Circuit noted, "the procedures underpinning [petitioner's] lengthy incarceration markedly increased the risk of error," because the IJ is empowered to draw adverse inferences against noncitizens in the face of any evidentiary gaps, creating a situation where the petitioner "was neither a flight risk nor a danger to the community but was unable to prove that was the case." *Velasco Lopez v. Decker*, 978 F.3d 842, 852 (2d Cir. 2020). Similarly, the First Circuit found that "proving a negative (especially a lack of danger) can often be more difficult than proving a cause for concern." *Hernandez-Lara v. Lyons*, 10 F.4th 19, 31 (1st Cir. 2021); *see also L.G. v. Choate*, 744 F. Supp. 3d 1172, 1183–84 (D. Colo. 2024).

66. Third, requiring that DHS bear the burden of establishing by clear and convincing evidence that a noncitizen is a danger or flight risk—does not meaningfully prejudice the government's interest in mitigating danger and risk of flight during proceedings. *See Zadvydas*, 533 U.S. at 690. DHS can access the records of other federal agencies and local law enforcement. In fact, it already regularly obtains such information, as it must establish that noncitizens are deportable by clear and convincing evidence. *See* 8 U.S.C. § 1229a(c)(3) (outlining criminal records permissible to establish deportability); *see also Velasco Lopez*, 978 F.3d at 853 ("In making the relevant inquiry, the Government had substantial resources to deploy. Those resources include computerized access to numerous databases and to information collected by DHS, DOJ, and the FBI, as well as information in the hands of state and local authorities."); *J.G. v. Warden, Irwin Cty. Detention Center*, 501 F. Supp. 3d 1331, 1337–38 (M.D. Ga. 2020). Indeed, again, the government's interest supports shifting the burden, because it has "a strong interest in erroneous deprivations of liberty. Incarceration that serves no legitimate purpose wastes taxpayers' money and hinders judicial efficiency." *Id.* at 1340.

67. Therefore, if the Court does not order Mr. Vigil Claros released, he should be provided with a bond hearing where the government bears the burden of demonstrating that he is a flight risk or danger to the community by "clear and convincing evidence." *Velasco Lopez*, 978 F.3d at 857; *German Santos v. Warden Pike Cty. Corr.*, 965 F.3d 203, 214 (3d Cir. 2020) (holding the DHS bears the burden of establishing danger or flight risk by clear and convincing evidence in § 1226(c) bond hearings); *Guerrero-Sanchez v. Warden York Cty. Prison*, 905 F.3d 208, 224 (3d Cir. 2018)[6] (holding the government to a clear and convincing standard in immigration bond hearings "[b]ecause it is improper to ask the [noncitizen] to 'share equally with society the risk of error when the possible injury to the individual'—deprivation of liberty—is so significant, a clear and convincing evidence standard of proof provides the appropriate level of procedural protection").[7] As other courts have held, such a burden-shifted bond hearing is particularly appropriate as a remedy for re-detention without pre- or post-deprivation process. *Servin Espinoza v. Noem*, 2025 WL 3543646, at *5 (W.D. Tex. Dec. 10, 2024); *Escobar-Arauz v. Noem*, 2025 WL

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[6] *Johnson v. Arteaga-Martinez*, 596 U.S. 573 (2022), abrogated *Guerrero-Sanchez*'s holding that § 1231(a)(6) requires a bond hearing after six months as a matter of statutory construction. However, it left open the constitutional question of what procedures due process requires, and therefore did not call into question the Third Circuit's due process analysis of the appropriate allocation of the burden of proof when a hearing is necessary. *Arteaga-Martinez*, 596 U.S. at 583; *cf. German S*, 965 F.3d at 210 (holding that the constitutional reasoning of prior Third Circuit cases remains binding despite the abrogation of those cases' statutory holdings).

[7] The Third Circuit's decision in *Borbot v. Warden Hudson County Correctional Facility* is not to the contrary because it did not address the question of whether the burden allocation in § 1226(a) is unconstitutional, and the constitutionality of the burden was not raised or briefed by the petitioner in the case. 906 F.3d 274 (3d Cir. 2018). In *Borbot*, the Third Circuit declined to order a second § 1226(a) bond hearing in a case where the petitioner raised a due process claim based exclusively on the length of his detention and did not challenge the constitutionality of the burden allocation in his initial bond hearing under § 1226(a). *Id.* at 276-77 ("The duration of *Borbot*'s detention is the sole basis for his due process challenge."). Accordingly, the Third Circuit in *Borbot* had no opportunity to consider what due process requires in light of the Supreme Court's extensive civil confinement and pre-trial detention jurisprudence, apply the *Mathews v. Eldridge* balancing test, or otherwise consider the claims raised here. Therefore, other Courts have found that *Borbot* does not foreclose Petitioner's arguments. *Hernandez-Lara*, 10 F.4th at 34-35.

354648, at *4 (W.D. Tex. Dec. 10, 2025); *Lopez-Arevelo v. Ripa*, 2025 WL 2691828, at *13 (W.D. Tex. Sept. 22, 2025); *Salazar v. Dedos*, No. 1:25-cv-835, 2025 WL 2676729, at *9 (D.N.M. Sept. 17, 2025).

68. Finally, this Court has the power to hold the bond hearing itself as a "legal and logical concomitant" of its habeas jurisdiction. *Leslie v. Holder*, 865 F. Supp. 2d 627, 634–35 (M.D. Pa. 2012). Courts have exercised this authority, "particularly where delay risks perpetuating the constitutional injury" and immigration court dockets are "exploding." *Centeno-Martinez v. Jamison*, No. 25-3593, 2025 WL 2157711, at *3 (E.D. Pa. Nov. 12, 2025); *see German Santos v. Lowe*, No. 1:18-CV-1553, 2020 WL 4530728, at *4 (M.D. Pa. Aug. 6, 2020) (Court conducted its own bond determination); *see also L.G.M. v. LaRocco*, 788 F. Supp. 3d 401, 407 (E.D.N.Y. 2025). Otherwise, IJs who are not used to applying the constitutionally required burden of proof discussed above may not do so correctly, necessitating further proceedings before this Court. *See, e.g.*, *Saltos Chiguano v. Lowe*, No. 1:24-cv-2210, 2025 WL 3187161, at *4 (M.D. Pa. Nov. 14, 2025) (deciding to hold a hearing before the district court after two different IJs failed to apply the appropriate burden of proof).

CLAIMS FOR RELIEF

COUNT I

Violation of the INA

69. Mr. Vigil Claros incorporates by reference the allegations of fact set forth in the preceding paragraphs.

70. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who previously entered the country and have been residing

in the United States prior to being apprehended by Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

71. A reading of § 1225(b)(2) to apply to all noncitizens already residing in the United States who were not previously admitted would render superfluous other mandatory detention provisions, including § 1226(c)(1)(A), (D), and (E), as well as the recent Laken Riley Act at § 1226(c)(1)(E). Where an interpretation of one provision renders another one superfluous, the interpretation is presumed to be incorrect. *Bilski v. Kappos*, 561 U.S. 593, 607–08 (2010).

72. This Court is not required to defer to *Matter of Yajure Hurtado's* new interpretation of the INA statutes at issue. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 385–86, 401 (2024) (interpretation of the meaning of a statute belongs to the "independent judgment" of the courts, as "agencies have no special competence in resolving statutory ambiguities"). This is especially true where the BIA acknowledges a change in its longstanding interpretation of the statute. *See Matter of Yajure Hurtado*, 29 I&N Dec. at 225 n.6 ("We acknowledge that for years Immigration Judges have conducted [§ 1226(a)] bond hearings for [noncitizens] who entered the United States without inspection.").

73. Respondents have twice previously found Mr. Vigil Claros subject to 8 U.S.C. § 1226(a).

74. The application of § 1225(b)(2) to Mr. Vigil Claros unlawfully mandates his continued detention and violates the INA.

75. Placing the burden on Mr. Vigil Claros during any § 1226(a) bond hearing further violates the INA.

COUNT II

Violation of Bond Regulations

76. Mr. Vigil Claros incorporates by reference the allegations of fact set forth in the preceding paragraphs.

77. 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. 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 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 (emphasis added). The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.

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

79. Respondents have repeatedly previously found Mr. Vigil Claros subject to 8 U.S.C. § 1226(a).

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

COUNT III

Violation of the Administrative Procedure Act

81. Mr. Vigil Claros incorporates by reference the allegations of fact set forth in the preceding paragraphs.

82. Respondents' failure to provide Petitioner with a bond hearing reflects an arbitrary and capricious interpretation of 8 C.F.R. § 236.1(c) and an unreasoned departure from past precedent. This failure constitutes a final agency action within the meaning of the APA.

83. Respondents' failure to provide Petitioner with a bond hearing is contrary to 8 U.S.C. § 1226(a), and is therefore arbitrary, capricious, and not in accordance with the law.

84. Petitioner has no other adequate remedy in court to obtain direct review of the agency actions and omissions challenged here to redress Respondents' failure to provide him with the bond procedures required by due process and the INA.

85. Accordingly, Respondents are in violation of the APA. 5 U.S.C. §§ 706(1), (2)(A)-(B).

COUNT IV

Violation of Due Process

86. Mr. Vigil Claros incorporates by reference the allegations of fact set forth in the preceding paragraphs.

87. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." *Zadvydas*, 533 U.S. at 690. The "importance and fundamental nature" of an individual's liberty interest is well-established. *Salerno*, 481 U.S. at 750; *see also Ashley*, 288 F. Supp. at 670 ("[F]reedom from confinement is a liberty interest of the highest constitutional import.").

88. Civil immigration detention serves only two legitimate purposes: mitigating flight risk and preventing danger to the community. *See Zadvydas*, 533 U.S. at 690; *Velasco Lopez*, 978 F.3d at 855. Further, fundamental due process protection applies to all noncitizens within the

United States, including both deportable and inadmissible noncitizens. *See id.* at 693; *Plyler v. Doe*, 457 U.S. 202, 212 (1982).

89. Mr. Vigil Claros is not a flight risk nor is he a danger to the community—as was found when ICE released him on October 2, 2018, again when he was ordered released on bond on December 21, 2020 (decision issued January 21, 2021), and a third time as upheld by the BIA on May 16, 2025.

90. Respondents' detention of Mr. Vigil Claros without a bond redetermination hearing further violates his right to due process by depriving him of sufficient pre- or post-deprivation process.

91. Placing the burden on Mr. Vigil Claros during any § 1226(a) bond hearing further violates due process.

PRAYER FOR RELIEF

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

a. Assume jurisdiction over this matter;

b. Order that Petitioner shall not be transferred outside the Middle District of Pennsylvania, unless to be returned to either the Eastern District of New York or Southern District of New York pursuant to the *Orantes-Hernandez* settlement agreement, while this habeas petition is pending;

c. Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner on conditions equivalent to those that existed prior to his September 4, 2025 detention;

d. In the alternative, provide Petitioner with a bond hearing conducted by the District Court. In the secondary alternative, direct the Immigration Court to conduct a burden-shifted bond hearing for Petitioner pursuant to 8 U.S.C. § 1226(a) within

seven days and further enjoin DHS from invoking an automatic stay should bond be granted;

e. Declare that Petitioner's detention is unlawful;

f. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and

g. Grant any other and further relief that this Court deems just and proper.

DATED this 28th of January, 2026.
New York, NY

Respectfully Submitted,

By: /s/ Jonah Eaton
Jonah Eaton
UnLocal
45 W. 29th Street, Suite 203
New York, NY 10001
jonah@unlocal.org
646-653-5427
Attorney for Petitioner

VERIFICATION

I am submitting this verification on behalf of the Petitioner because I am one of his attorneys. I have discussed with the Petitioner's legal team the events described in this Petition. On the basis of those discussions, on information and belief, I hereby verify that the factual statements made in the attached Verified Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

DATED this 28th of January, 2026.
New York, NY

Respectfully Submitted,

By: /s/ Jonah Eaton
Jonah Eaton
UnLocal
45 W. 29th Street, Suite 203
New York, NY 10001
jonah@unlocal.org
646-653-5427
Pro Bono Attorney for Petitioner