

Ray Ybarra Maldonado, Esq. (AZ Bar No. 027076)

Ybarra Maldonado Law Group

P.O. Box 551

Phoenix, AZ 85001

Phone: (602) 910-4040

Fax: (602) 910-4444

ray@abogadoray.com

Attorney for Petitioner

Attorney for Elvin David Jimenez Diaz

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

DIAZ-JIMENEZ, Elvin David

Petitioner,

v.

Pamela Bondi, in her official capacity as
Attorney General of the United States;
Markwayne Mullin, in his official capacity
as Secretary of the Department of
Homeland Security; Daren K. Margolin,
Acting Director, Executive Office for
Immigration Review; Christopher
McGregor, in his official capacity as
Phoenix Field Office Director, Immigration
and Customs Enforcement, Enforcement
and Removal Operations; Alexis Garcia,
The Warden of the Florence Service
Processing Center (FSPC).

Respondents.

Case No.:

**VERIFIED PETITION FOR
WRIT OF HABEAS CORPUS**

INTRODUCTION

1. Petitioner, Mr. Elvin David Diaz Jimenez, moves this Court to issue a Writ of Habeas Corpus to compel the Respondents to appear and show cause why the Petitioner should not be released from the custody of the U.S. Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE), and to order declaratory and injunctive relief to remedy his soon to be unlawful detention, and to enjoin the Respondents from continuing to deny his release from immigration custody.

SUMMARY OF THE ARGUMENT

2. Mr. Jimenez Diaz will soon be detained in the custody of the Department of Homeland Security ("DHS"), in Florence Service Processing Center (SPC) at 3250 N. Pinal Parkway, Florence, AZ 85132, United States under 8 U.S.C. § 1226 and 8 C.F.R. § 1236. Respondents will likely claim the legal basis for his detention is 8 U.S.C. § 1225. He is currently detained at the Core Civic Facility in Florence under the custody of the City of Mesa. Exhibit A, City of Mesa Jail Roster.
3. As of today's date, March 23, 2026, Mr. Jimenez Diaz remains in the Core Civic facility and has been there for roughly two days. His last court hearing for immigration was on March 16, 2026, where the Immigration Judge set a future hearing date of June 11, 2026. He has been informed ICE has a "hold" on him and will attain custody of him after the conclusion of his criminal case with the City of Mesa. His next court hearing in Mesa is March 24, 2026.

represents the position and policies of EOIR to the Attorney General, Members of Congress, and other governmental bodies.

9. Respondent Christopher McGregor is sued in his official capacity as the Phoenix Field Office Director of Immigration and Customs Enforcement (ICE). In his official capacity, he is a legal custodian over Petitioner because he is responsible for providing a detailed worksheet, including a recommendation on continued detention or release, so that the Headquarters Custody Determination Unit can make the final decision on continued detention.

10. Respondent, Alexis Garcia, the Warden of the Central Arizona Florence Service Processing Center (SPC), in his official capacity, is the immediate custodian of Mr. Jimenez Diaz, who is currently detained at Corecivic but will likely soon be transferred to the Florence Processing Center.

JURISDICTION

11. This Court has jurisdiction under 28 U.S.C. § 2241(c)(3); Article I § 9, Clause 2 of the United States Constitution ("Suspension Clause"), and 28 U.S.C. § 1331, as the Petitioner is presently in custody under color of the authority of the United States, and such custody is in violation of the Constitution, laws, regulations, and, or treaties of the United States, specifically the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et seq.*

12. This Court may also exercise jurisdiction under 28 U.S.C. § 1361 ("Mandamus Clause"). 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 to protect Petitioners' rights under the Due Process Clause of the

1 Fifth Amendment to the United States Constitution and under applicable Federal
2 law, and to issue a writ of habeas corpus for his immediate release. See
3 generally *INS v. St. Cyr*, 533 U.S. 289 (2001); *Zadvydas v. Davis*, 533 U.S. 678
4 (2001).

5 VENUE

6 **13.** Venue is proper in the Arizona District Court because Mr. Jimenez Diaz will
7 likely be detained at the Florence Service Processing Center (SPC), in Florence,
8 Arizona, and the records and witnesses pertinent to his claim are likely to be
9 found there. Florence, Arizona is within the geographical jurisdiction of this Court
10 and is also where he is currently detained with an ICE hold. Several of the
11 Respondents reside and work in their official capacity in this District. 28 U.S.C.
12 1391(e). Furthermore, it is a convenient forum for both the Respondents and the
13 Petitioner. *Branden v. 30th Judicial Circuit Court*, 410 U.S. 484, 493-94 (1973).
14

15 STATEMENT OF FACTS

16 **14.** Petitioner Mr. Jimenez Diaz is a native citizen of Honduras. He entered the
17 United States without inspection in 2005 has resided in the United States ever
18 since. See Exhibit C, I-213.

19 **15.** On March 21, 2026, law enforcement officers responded to a call of a domestic
20 dispute. Mr. Diaz Jimenez was not accused of any new crimes but officers
21 discovered an outstanding warrant from the City of Mesa. Mr. Diaz Jimenez
22 was taken into custody. When his wife tried paying the \$500.00 bond she was
23 told not to make the payment as ICE already had a "hold" placed on him.
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1 16. Mr. Jimenez Diaz remains in custody, and it is believed that after he is released
2 from the City of Mesa he will be taken into ICE custody and held without bond.
3

4 **LEGAL ARGUMENT**

5 17. Mr. Jimenez Diaz will be detained under 8 U.S.C. § 1226 and 8 C.F.R. § 1236.

6 The statute expressly authorizes the Attorney General to release detained aliens
7 on “bond...or conditional parole” subject to the limitations in found at 8 U.S.C. §
8 1226(c). 8 U.S.C. § 1226(a)(2), (c). If they are not detained pursuant to 8 U.S.C.
9 § 1226(c), a detained alien may apply for release on bond and an Immigration
10 Judge, exercising the authority delegated from the Attorney General, must
11 determine whether the alien would “pose a danger to persons or to property” and
12 “that the alien is likely to appear for any scheduled proceeding or interview.” 8
13 C.F.R. § 1003.19(h)(3).
14

15 18. Respondents will likely contend that Mr. Jimenez Diaz is detained pursuant to 8
16 U.S.C. § 1225. See *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025). Mr.
17 Jimenez Diaz a came into contact with Immigration and Customs Enforcement
18 (“ICE”) on March 21, 2026, after being pulled over that day, which led to his
19 detention. At present, no party contends that Mr. Jimenez Diaz will be detained
20 pursuant to 8 U.S.C. § 1225(b)(1) or 8 U.S.C. § 1226(c).
21

22 19. To the extent that the government relies on *Yajure Hurtado* in refusing to consider
23 Mr. Jimenez Diaz request for a bond hearing, the government violates the statute
24 and applicable regulations and deprived Mr. Jimenez Diaz of due process.
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1 **20.** The Due Process clause of the constitution applies to all persons in the United
2 States, “whether their presence here is lawful, unlawful, temporary, or permanent.”
3 *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). Procedural due process contains
4 government decisions that deprive individuals of property or liberty interests within
5 the meaning of the Due Process Clause of the Fifth Amendment. *See Matthews*
6 *v. Eldridge*, 424 U.S. 319, 332 (1976); *see also Perry v. Sindermann*, 408 U.S.
7 593, 601-03 (1972) (reliance on informal policies and practices may establish a
8 legitimate claim of entitlement to a constitutionally protected interest). Infringing
9 on a protected interest triggers a right to a hearing before that right is deprived.
10 *See Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 569-70 (1972).

11
12 **21.** Mr. Jimenez Diaz has a legitimate liberty interest in his potential release from
13 detention under INA § 1226. His detention will be arbitrary, capricious, and
14 contrary to law as it misclassifies him as an “applicant for admission” and deprives
15 him of that interest without a meaningful opportunity to challenge the basis of his
16 detention.

17
18 **22.** Respondents’ misclassification of Mr. Jimenez Diaz is contrary to law because it
19 violates long-established canons of statutory construction by rendering the text of
20 the INA, congressional action, and recent Board precedent unnecessary and
21 superfluous.

22 **23.** First, Respondents’ reading of 8 USC § 1225 cannot be squared with the fact
23 that that under “one of the most basic interpretive canons . . . [a] statute should
24 be construed so that effect is given to all its provisions, so that no part will be
25 inoperative or superfluous, void or insignificant[.]” *Corley v. United States*, 556
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1 U.S. 303, 314 (2009) (cleaned up); *Shulman v. Kaplan*, 58 F.4th 404, 410–11
2 (9th Cir. 2023) (“a court must interpret the statute as a whole, giving effect to
3 each word and making every effort not to interpret a provision in a manner that
4 renders other provisions of the same statute inconsistent, meaningless or
5 superfluous.”) (cleaned up). “This principle . . . applies to interpreting any two
6 provisions in the U.S. Code, even when Congress enacted the provisions at
7 different times.” *Bilski v. Kappos*, 561 U.S. 593, 607–08 (2010).

8
9 **24.** In order to detain Mr. Jimenez Diaz under 8 U.S.C. § 1225(b), an immigration
10 officer must determine that the noncitizen “is an applicant for admission . . .
11 seeking admission . . . and not clearly and beyond a doubt entitled to be
12 admitted.” 8 U.S.C. § 1225(b)(2)(A). Determining the plain meaning of the
13 statute requires consideration of the tense of the verb “is” and the present
14 participle “seeking.” Here, section 1225(b)(2) applies to aliens who are presently
15 applicants for admission and who are presently seeking admission at the time
16 of their detention. To be seeking admission means to be seeking entry, which
17 “by its own force implies a coming from outside.” *United States ex rel. Claussen*
18 *v. Day*, 279 U.S. 398, 401 (1929).

19
20 **25.** Mr. Jimenez Diaz has been in the United States for over two decades. He is not
21 currently “seeking admission” within the plain meaning of that term as he has
22 resided in the United States for 20 years. The longstanding interpretation of the
23 INA has been that an alien in his position is detained under section 1226 and
24 entitled to a bond hearing, as Respondents themselves have acknowledged.
25 *See Yajure Hurtado*, 29 I&N Dec. at 225, n. 6 (“We acknowledge that for years
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1 Immigration Judges have conducted bond hearings for aliens who entered the
2 United States without inspection"). Consistent with Supreme Court precedent,
3 this was the basis of BIA decisions finding that aliens detained *shortly after an*
4 *unlawful entry* were applicants for admission because they "cannot be said to
5 have 'effected an entry.'" *Matter of Q. Li*, 29 I&N Dec. 66, 68 (BIA 2025) (quoting
6 *DHS vs. Thuraissigiam*, 591 U.S. 103, 140 (2020) (internal quotations omitted)).

7 **26.** Respondents' interpretation of section 1225 fails to account for other sections
8 of the INA as well. If all inadmissible aliens present without admission or
9 inspection were subject to mandatory detention under section 1225, there would
10 be no reason for § 1226(c)(1)(A) and (D) to subject inadmissible aliens to
11 mandatory detention for committing certain criminal offenses. See 8 U.S.C. §
12 1226(c)(1)(A), (D).

13
14 **27.** This is especially true in light of Congress's recent decision to pass the Laken Riley
15 Act. See Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2005). "When
16 Congress acts to amend a statute, we presume it intends its amendment to have
17 real and substantial effect." *Stone v. I.N.S.*, 514 U.S. 386, 397 (1995) (citations
18 omitted) (giving effect to a congressional amendment of the INA). The new
19 additions to section 1226(c) subject an additional class of inadmissible aliens to
20 its mandatory detention scheme if they find themselves so much as arrested for
21 certain crimes. See 8 U.S.C. § 1226(c)(1)(E). The Laken Riley Act is even more
22 specific than the older provisions of section 1226(c), as it specifically refers to
23 aliens like Respondent "inadmissible under paragraph (6)(A), (6)(C), or (7) of
24 section 1182(a) of this title." 8 U.S.C. § 1226(c)(E)(i). The Supreme Court has
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1 recognized that when Congress creates “specific exceptions” to a statute’s
2 applicability, it proves that the statute would generally apply absent those
3 exceptions. See *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559
4 U.S. 393, 400 (2010). Congress clearly acted with the understanding that
5 inadmissible aliens are generally detained under section 1226 and eligible to
6 request bond, because if they were not, there would have been no reason to
7 amend the INA to require mandatory detention for inadmissible aliens accused
8 of certain criminal activities.

9
10 **28.** Congress’s amendments to the INA demonstrate a consistent understanding of
11 section 1226 dating back to the legislative history of the Illegal Immigration
12 Reform and Immigration Responsibility Act (“IIRIRA”). Prior to IIRIRA’s
13 passage, section 1226’s predecessor governed the detention of all aliens
14 arrested and detained in the United States and allowed for release on bond. See
15 INA § 1252(a)(1) (1994). Congress stated that IIRIRA section 1226(a) merely
16 “restates the current provisions in [the predecessor statute] regarding the
17 authority of the Attorney General to arrest, detain, and release on bond a[]
18 [noncitizen] who is not lawfully in the United States.” H.R. Rep. No. 104-469, pt.
19 1, at 229; see also H.R. Rep. No. 104-828, at 210 (same). If Mr. Salazar
20 Cardenas would have been eligible to request a bond before the passage of
21 IIRIRA, and Congress did not alter the Attorney General’s power to grant a bond
22 by passing IIRIRA, it follows that he is eligible to request a bond now.

23
24 **29.** The documents in the immigration record do not show that Mr. Jimenez Diaz is
25 either a danger or a flight risk. He has resided in the United States without incident
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1 for roughly twenty years and has no criminal record. He has been a wonderful and
2 supportive and husband. Mr. Jimenez Diaz is involved in his community. Under
3 a proper interpretation of the law, he would be allowed to litigate his case outside
4 of detention or at least be entitled to ask for the opportunity to do so.
5

6 CLAIMS FOR RELIEF

7 **30.** Mr. Jimenez Diaz re-alleges and incorporates by reference each and every
8 allegation contained in paragraphs 1-29, as if set forth herein.

9 **31.** Respondents' interpretation of 8 U.S.C. § 1225(b) violates Mr. Jimenez Diaz
10 substantive due process right to liberty because it allows the government to
11 infringe on his fundamental liberty interests through a process that is not
12 narrowly tailored to meet the compelling government interest of protecting public
13 safety.
14

15 EXHAUSTION OF ADMINISTRATIVE REMEDIES

16 **32.** Exhaustion is not mandated in this case since neither INA § 236, 8 U.S.C. §
17 1226, nor the federal review provisions of INA § 242, 8 U.S.C. § 1252, require the
18 Petitioner to exhaust administrative remedies for purposes of challenging the
19 constitutionality of regulations allegedly implemented under bond proceedings
20 under INA §§ 235(b)(2) or 236(c), 8 U.S.C. §§ 1225(b)(2), 1226(c).
21

22 **33.** The exhaustion requirements under INA § 242(d)(1), 8 U.S.C. § 1252(d)(1), are
23 inapplicable to bond challenges. *National Center for Immigrants Rights, Inc. v.*
24 *INS*, 791 F.2d 1351 (9th Cir. 1986), vacated on other grounds, 481 U.S. 1009
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(1987), reaffirmed, 913 F.2d 1350 (9th Cir. 1990), vacated on other grounds, 502 U.S. 183 (1991).

34. Exhaustion of administrative remedies before the filing of this writ is not necessary, since the Petitioner has raised constitutional issues concerning his detention. The administrative forum "...provide[s] no real opportunity to present...constitutional issues requiring exhaustion." *Legalization Assistance Project v. INS*, 976 F.2d 1198, 1203 (9th Cir. 1992).

35. Exhaustion is not necessary where raising the issues presented in this writ to the immigration court would be futile and moot. *American-Arab Anti-Discrimination Committee v. Reno*, 70 F.3d 1045, 1058 (9th Cir. 1995) rev'd on other grounds, 119 S.Ct. 936 (1999). EOIR has issued a published decision requiring all individuals similarly situated to Mr. Jimenez Diaz to be detained without a bond hearing, and have refused to consider recent district court decisions such as *Maldonado Bautista v. Santacruz*, 5:25-cv-01873-SSS-BFM (C.D. Cal. Nov. 25, 2025) as binding. See *Yajure Hurtado*, 29 I&N Dec. at 216; see also, *AILA Practice Alert: EOIR issues Nationwide Guidance on Maldonado Bautista* available at <https://myattorneyusa.com/wp-content/uploads/2026/01/nationwide-guidance-on-maldonado-bautista.pdf>, last visited March 20, 2026.

36. The exhaustion requirement is not a jurisdictional prerequisite but a matter committed to the "sound discretion of the trial court." See *NLRB v. Industrial Union of Marine and Shipbuilding Workers*, 391 U.S. 418, 426 n.8 (1968). Respondents have issued a published decision interpreting 8 U.S.C. § 1225 which

1 they intend to apply nationwide and in all cases with similar facts to Petitioner's.

2 See *Yajure Hurtado*, 29 I&N Dec. at 216.

3 **37.** Such a decision is plainly contrary to Mr. Jimenez Diaz statutory, regulatory, and
4 constitutional rights to due process, which this Honorable Court should review
5 without delay; and thus, this is a matter ripe for the "sound discretion of the trial
6 court." See *NLRB v. Industrial Union of Marine and Shipbuilding Workers*, 391
7 U.S. 418, 426 n. 8 (1968).

8 **38.** Finally, a record of administrative appeal is not germane to the purely legal
9 issue of whether Respondents' interpretation of 8 U.S.C. § 1225 is arbitrary,
10 capricious, contrary to law, or violates Mr. Jimenez Diaz's statutory, regulatory,
11 and due process rights.
12

13 **REQUEST FOR RELIEF**

14 **39.** The Petitioner herein respectfully requests that this Court enter the following
15 findings and order the following relief:

- 16 1) Issue an order restraining the Respondents from attempting to move Mr. Jimenez
17 Diaz from the State of Arizona while this petition is pending;
18 2) Issue an order requiring the Respondents to provide seventy-two hours' notice of
19 their intent to move him;
20 3) Grant a writ of Habeas Corpus, directed to the Respondents, requiring them to
21 either release Mr. Jimenez Diaz immediately or hold a bond hearing pursuant to
22 8 U.S.C. § 1226;
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- 1 4) Declare that Mr. Jimenez Diaz current "hold" and future detention is arbitrary and
2 capricious and violates the INA, its implementing regulations, and Due Process
3 Clause of the Fifth Amendment to the United States Constitution;
4 5) Award Mr. Jimenez Diaz and his counsel reasonable costs and attorney's fees
5 incurred as a result of bringing this action, pursuant to the Equal Access to Justice
6 Act, 28 U.S.C. § 2412; and
7 6) Grant any further relief that this Court may deem fit, just, and proper.
8

9 Dated: March 23, 2026,

Respectfully submitted,

10 /s/Ray Ybarra Maldonado
11 Ray Ybarra Maldonado
12 Attorney for Petitioner
13 Elvin David Jimenez Diaz
14
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16

17 **VERIFICATION**

18 I, Ray Ybarra Maldonado, hereby declare under penalty of perjury of the laws of the State
19 of Arizona and the United States that the facts alleged in the foregoing Verified Petition
20 for a Writ of Habeas Corpus are to the best of my knowledge true and correct.
21

22 Executed on this 23th of March, 2026, in Phoenix, Arizona.

23
24 /s/Ray Ybarra Maldonado
25 Ray Ybarra Maldonado
26 Attorney for Petitioner
Elvin David Jimenez Diaz

Certificate of Service

I hereby certify that on this 23rd of March of 2026, I electronically submitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of Notice of Electronic Filing; however, since no attorney from U.S. Attorney's Office has entered his or her appearance yet in this case, I caused a copy of the foregoing to be delivered via electronic mail to:

Dina Anagnopoulos
Two Renaissance Square
40 N. Central Ave., Suite 1800
Phoenix, AZ 85004-4449
Dina.Anagnopoulos@usdoj.gov