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5
6 IN THE UNITED STATES DISTRICT COURT
7
8 FOR THE DISTRICT OF ARIZONA

9 Bernardo ALQUISIRA-APAEZ,

10 Petitioner,

File No.-26-CV-.....

11 v.

**PETITION FOR WRIT OF
HABEAS CORPUS**

12 John CANTU, Field Office Director of
Enforcement and Removal Operations,
13 Phoenix Field Office, Immigration and
Customs Enforcement;
14 Markwayne MULLIN, Secretary, U.S.
Department of Homeland Security;
15 U.S. DEPARTMENT OF HOMELAND
SECURITY;
16 Pamela BONDI, U.S. Attorney General;
EXECUTIVE OFFICE FOR
17 IMMIGRATION REVIEW;
Luis ROSA JR., Warden of Central
18 Arizona Florence Correctional Complex
Respondents.

INTRODUCTION

1
2 1. Petitioner, Bernardo ALQUISIRA-APAEZ is in the physical custody of
3 Respondents at the Central Arizona Florence Correctional Complex. He now faces
4 unlawful detention because the Department of Homeland Security (DHS) and the
5 Executive Office of Immigration Review (EOIR) have concluded Petitioner is subject to
6 mandatory detention.

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

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

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

21 5. Petitioner's detention on this basis violates the plain language of the Immigration
22 and Nationality Act. Section 1225(b)(2)(A) does not apply to individuals like Petitioner

1 who previously entered and are now residing in the United States. Instead, such
2 individuals are subject to a different statute, § 1226(a), that allows for release on
3 conditional parole or bond. That statute expressly applies to people who, like Petitioner,
4 are charged as inadmissible for having entered the United States without inspection.

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

8 7. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be released
9 from custody or, in the alternative, that Respondents provide a bond hearing under §
10 1226(a) within seven days.

11 JURISDICTION

12 8. Petitioner is in the physical custody of Respondents. Petitioner is detained at the
13 Florence Correctional Complex in Florence, Arizona.

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

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

19 VENUE

20 11. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-
21 500 (1973), venue lies in the United States District Court for the District of Arizona, the
22 judicial district in which Petitioner currently is detained.

12. 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 District of Arizona.

REQUIREMENTS OF 28 U.S.C. § 2243

13. 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.*

14. 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). “The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application.” *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

PARTIES

15. Petitioner Bernardo ALQUISIRA-APAEZ is a citizen of Mexico who has been in immigration detention since June 28, 2025. After arresting Petitioner in Florence, Arizona, ICE did not set bond and Petitioner is unable to obtain review of his custody by an IJ, pursuant to the Board’s decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

1 16. Respondent John CANTU is the Director of the Phoenix Field Office of ICE's
2 Enforcement and Removal Operations division. As such, John CANTU is Petitioner's
3 immediate custodian and is responsible for Petitioner's detention and removal. He is sued
4 in his official capacity.

5 17. Respondent Markwayne MULLIN is the Secretary of the Department of
6 Homeland Security. He is responsible for the implementation and enforcement of the
7 Immigration and Nationality Act (INA), and oversees ICE, which is responsible for
8 Petitioner's detention. Respondent MULLIN has ultimate custodial authority over
9 Petitioner and is sued in his official capacity.

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

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

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

20 21. Respondent Luis ROSA JR. is employed by CoreCivic, Inc. as Warden of the
21 Central Arizona Florence Correctional Complex, where Petitioner is detained. He has
22 immediate physical custody of Petitioner. He is sued in his official capacity.

LEGAL FRAMEWORK

22. The Fifth Amendment to the United States Constitution provides that no person shall be deprived of liberty without due process of law. U.S. Const. amend. V. Noncitizens physically present within the United States are “persons” within the meaning of the Fifth Amendment and are therefore entitled to its protections. *Wong Wing v. United States*, 163 U.S. 228 (1896). Immigration detention, although civil in nature, constitutes a significant deprivation of physical liberty and must comply with both the statutory framework established by Congress and the constitutional requirements of due process. The Supreme Court has repeatedly recognized that civil detention imposed by the government implicates fundamental liberty interests. Freedom from physical restraint lies at the core of the liberty protected by the Due Process Clause, and even in the immigration context, the government must ensure that detention remains reasonably related to its lawful purpose and is not arbitrary or excessive. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Addington v. Texas*, 441 U.S. 418, 425 (1979).

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

24. 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), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

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

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

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

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

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

18 30. Thus, in the decades that followed, most people who entered without inspection
19 and were placed in standard removal proceedings received bond hearings, unless their
20 criminal history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). That practice
21 was consistent with many more decades of prior practice, in which noncitizens who were
22 not deemed “arriving” were entitled to a custody hearing before an IJ or other hearing

1 officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229
2 (1996) (noting that § 1226(a) simply “restates” the detention authority previously found
3 at § 1252(a)).

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

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

12 33. On September 5, 2025, the BIA adopted this same position in a published
13 decision, *Matter of Yajure Hurtado*. There, the Board held that all noncitizens who
14 entered the United States without admission or parole are subject to detention under §
15 1225(b)(2)(A) and are ineligible for IJ bond hearings.

16 34. Since Respondents adopted their new policies, dozens of federal courts have
17 rejected their new interpretation of the INA’s detention authorities. Courts have likewise
18 rejected *Matter of Yajure Hurtado*, which adopts the same reading of the statute as ICE.

19 35. Even before ICE or the BIA introduced these nationwide policies, IJs in the
20 Tacoma, Washington, immigration court stopped providing bond hearings for persons
21 who entered the United States without inspection and who have since resided here. There,
22 the U.S. District Court in the Western District of Washington found that such a reading of

1 the INA is likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who
2 are not apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, 779
3 F. Supp. 3d 1239 (W.D. Wash. 2025).

4 36. In addition, numerous federal courts have rejected ICE and EOIR's interpretation
5 of the INA's detention provisions. These courts found that § 1226(a), rather than §
6 1225(b)(2), governs the detention authority in cases involving noncitizens who entered
7 without inspection. Courts that have come to this conclusion include but are not limited
8 to: Massachusetts, Arizona, New York, Minnesota, California, and Nebraska. See: *Gomes*
9 *v. Hyde*, No. 1:25-CV-11571-JEK (D. Mass. July 7, 2025); *Rosado v. Figueroa*, No. CV
10 25-02157 PHX DLR (CDB) (D. Ariz. Aug. 11, 2025); *Lopez Benitez v. Francis*, No. 25
11 CIV. 5937 (DEH) (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-
12 SRN-SGE (D. Minn. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM (D. Mass.
13 Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF (N.D. Cal. Aug. 21,
14 2025); *Palma Perez v. Berg*, No. 8:25CV494 (D. Neb. Sept. 3, 2025).

15 37. Furthermore, the Central District of California vacated *Matter of Yajure Hurtado*
16 on February 18, 2026. *Lazaro Maldonado Bautista et al. v. Ernesto Sanchez Jr et al.*, No.
17 25-CV-01873-SSS-BFM (C.D. Cal. Feb. 18, 2026). This vacatur was stayed by the Ninth
18 Circuit pending appeal on March 6, 2026. *Lazaro Maldonado Bautista et al v. U.S.*
19 *Department of Homeland Security et al.*, No. 26-1044 (9th Cir., March 6, 2026). While IJs
20 and the BIA may continue to argue that this vacatur does not apply outside of the Central
21 District of California, this decision, combined with the above-mentioned District Court
22 decisions, support the position that the government's reliance on § 1225(b)(2) is

1 erroneous in cases involving those whose immigration status lawfully falls under §
2 1226(a).

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

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

10 40. The text of § 1226 also explicitly applies to people charged as being inadmissible,
11 including those who entered without inspection. See 8 U.S.C. § 1226(c)(1)(E).

12 Subparagraph (E)'s reference to such people makes clear that, by default, such people are
13 afforded a bond hearing under subsection (a). As the *Rodriguez Vazquez* court explained,
14 "[w]hen Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that
15 absent those exceptions, the statute generally applies." *Rodriguez Vazquez*, 779 F. Supp.
16 3d at 1257 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S.
17 393, 400 (2010)); see also *Gomes*, 2025 WL 1869299, at *7.

18 41. Section 1226 therefore leaves no doubt that it applies to people who face charges
19 of being inadmissible to the United States, including those who are present without
20 admission or parole.

21 42. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who
22 recently entered the United States. The statute's entire framework is premised on

1 inspections at the border of people who are “seeking admission” to the United States. 8
2 U.S.C. § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory
3 detention scheme applies “at the Nation’s borders and ports of entry, where the
4 Government must determine whether a[] [noncitizen] seeking to enter the country is
5 admissible.” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

6 43. Moreover, the Laken Riley Act amended 8 U.S.C. § 1225 to apply mandatory
7 detention to certain noncitizens who entered the United States without inspection. Laken
8 Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025). This amendment further demonstrates
9 that Section 1225(b) was never intended to apply to noncitizens in the interior of the
10 United States who are not seeking admission.

11 44. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply
12 to people like Petitioner, who have already entered and were residing in the United States
13 at the time they were apprehended.

14 45. Even where detention is authorized by statute, it remains subject to constitutional
15 limitations. The Supreme Court has made clear that civil detention must bear a reasonable
16 relationship to its regulatory purpose and may not become indefinite or arbitrary. In
17 *Zadvydas*, the Court held that immigration detention is permissible only for a period
18 reasonably necessary to achieve its purpose and emphasized that prolonged detention
19 without adequate justification raises serious constitutional concerns. 533 U.S. at 690.

20 46. Federal courts retain authority under 28 U.S.C. § 2241 to review the legality of
21 immigration detention. The Supreme Court has consistently recognized that habeas
22 corpus remains available as a means of challenging unlawful detention in the immigration

1 context. See *INS v. St. Cyr*, 533 U.S. 289 (2001). In *Jennings v. Rodriguez*, the Court
2 confirmed that although the immigration detention statutes do not themselves require
3 periodic bond hearings as a matter of statutory interpretation, detainees may continue to
4 raise constitutional challenges.

5 47. Following *Jennings*, the Ninth Circuit has reaffirmed that individuals in
6 immigration detention may challenge the legality of their detention through habeas
7 corpus. In *Rodriguez v. Marin*, 909 F.3d 252 (9th Cir. 2018), the court held that detainees
8 may pursue constitutional claims regarding prolonged detention notwithstanding the
9 Supreme Court's rejection of a statutory bond hearing requirement. More recent Ninth
10 Circuit authority continues to reaffirm that immigration detention must comply with due
11 process. In *Hernandez v. Garland*, 52 F.4th 757 (9th Cir. 2022), the court reiterated that
12 detention in immigration proceedings implicates fundamental liberty interests and must
13 be accompanied by adequate procedural safeguards. The Ninth Circuit has further
14 emphasized that immigration detention procedures must provide meaningful procedural
15 safeguards to satisfy due process.

16 48. Taken together, these statutory provisions, regulations, and judicial precedents
17 establish several fundamental principles. First, immigration detention must be authorized
18 by statute and implemented within the limits set by Congress. Second, individuals
19 detained under § 1226(a) are entitled to seek release through a bond hearing before an
20 Immigration Judge. Third, prolonged detention without meaningful procedural safeguards
21 raises serious constitutional concerns under the Due Process Clause. Finally, federal
22

1 courts retain authority through habeas corpus to review the legality of detention and to
2 order appropriate relief where detention exceeds statutory or constitutional limits.

3 FACTS

4 49. Petitioner has resided in the United States since approximately 2003 and lives in
5 Phoenix, Arizona.

6 50. On June 28, 2025, Petitioner was arrested by ICE ERO officers after a scheduled
7 criminal court hearing. Petitioner is now detained at the Central Arizona Florence
8 Correctional Complex, where he has been detained since this date.

9 51. DHS placed Petitioner in removal proceedings before the Florence Immigration
10 Court pursuant to 8 U.S.C. § 1229a. ICE has charged Petitioner with, inter alia, being
11 inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as someone who entered the United
12 States without inspection. During removal proceedings, Petitioner applied for 42B
13 Cancellation of Removal based on his long residence, good moral character, and the
14 hardship that his removal would cause specifically to his daughter, who has been
15 diagnosed with Autism Spectrum Disorder, Mild Intellectual Disabilities, Attention-
16 Deficit Hyperactivity Disorder, and Frontal Lobe Syndrome. After considering the
17 evidence, the Immigration Judge granted Petitioner's application for relief. That decision
18 reflects a finding that Petitioner possesses significant equities and satisfies the statutory
19 requirements for relief. A grant of 42B effectively awards the individual status in the
20 United States as a lawful permanent resident.

1 52. The Department of Homeland Security appealed the Immigration Judge's
2 decision, and the case remains pending before the Board of Immigration Appeals at the
3 time of this petition.

4 53. Petitioner has significant family ties to the United States, including four United
5 States citizen children and one United States citizen sister. Petitioner is neither a flight
6 risk nor a danger to the community.

7 54. Pursuant to *Matter of Yajure Hurtado*, the Immigration Judge is unable to
8 consider Petitioner's bond request.

9 55. As a result, Petitioner remains in detention, despite the Immigration Judge's grant
10 of relief. Without relief from this court, Petitioner face the prospect of months, or even
11 years, in immigration custody, separated from his family and community.

12 **CLAIMS FOR RELIEF**

13 **COUNT I**

14 **Violation of the INA**

15 56. Petitioner incorporates by reference the allegations of fact set forth in the
16 preceding paragraphs.

17 57. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all
18 noncitizens residing in the United States who are subject to the grounds of
19 inadmissibility. As relevant here, it does not apply to those who previously entered the
20 country and have been residing in the United States prior to being apprehended and
21 placed in removal proceedings by Respondents. Such noncitizens are detained under §
22 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

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

3 **COUNT II**

4 **Violation of Due Process**

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

7 60. The government may not deprive a person of life, liberty, or property without due
8 process of law. U.S. Const. amend. V. “Freedom from imprisonment—from government
9 custody, detention, or other forms of physical restraint—lies at the heart of the liberty that
10 the Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

11 61. Petitioner has a fundamental interest in liberty and being free from official
12 restraint.

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

16 **COUNT III**

17 **Detention in Excess of Statutory and Regulatory Authority**

18 63. Petitioner incorporates by reference the allegations set forth above.

19 64. The Immigration and Nationality Act and its implementing regulations provide that
20 individuals detained under § 1226(a) are entitled to seek release through a custody
21 redetermination hearing before an Immigration Judge.
22

1 65. Respondents have failed to provide Petitioner with access to these procedures. As a
2 result, Petitioner has remained detained for an extended period without any review of his
3 custody status.

4 66. By failing to follow the statutory and regulatory framework governing detention,
5 Respondents have acted in excess of their lawful authority, rendering Petitioner's
6 continued detention unlawful.

7 PRAYER FOR RELIEF

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

- 9 a. Assume jurisdiction over this matter;
- 10 b. Order that Petitioner shall not be transferred outside the District of Arizona
11 while this habeas petition is pending;
- 12 c. Issue an Order to Show Cause ordering Respondents to show cause why this
13 Petition should not be granted within three days;
- 14 d. Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner or,
15 in the alternative, provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a)
16 within seven days;
- 17 e. Declare that Petitioner's detention is unlawful;
- 18 f. Award Petitioner attorney's fees and costs and grant any other and further relief
19 that this Court deems just and proper.

20 Dated this 25th Day of March, 2026

21 /s/ Lisa L. Elkin
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