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9 UNITED STATES DISTRICT COURT
10 DISTRICT OF ARIZONA
11 PHOENIX DIVISION

12 **Sergio Hernandez Ramirez,**

13)
14) Petitioner,

15) v.

16 **Luis Rosa Jr.,** Warden, Central
17 Arizona Florence Correctional Center;
18 **Director,** Phoenix Field Office, U.S.
19 Immigration & Customs Enforcement,
20 Enforcement & Removal Operations;
21 **Todd M. Lyons,** Acting Director,
22 U.S. Immigration & Customs
23 Enforcement; **Markwayne Mullin,**
24 Secretary, U.S. Department of
Homeland Security; **Todd Blanche,**
Acting U.S. Attorney General; and
Daren K. Margolin, Director,
Executive Office for Immigration
Review,

25 Respondents.
26

Case No.

**VERIFIED PETITION FOR WRIT
OF HABEAS CORPUS UNDER
28 U.S.C. § 2241**

27 **INTRODUCTION**

28 1. Petitioner Sergio Hernandez Ramirez has been in the physical custody

1 of Respondents at the Central Arizona Florence Correctional Center for over two
2 months. *See* Exhibit 1. He is being unlawfully detained because the Department of
3 Homeland Security (DHS) and the Executive Office for Immigration Review
4 (EOIR) have adopted a new, unlawful interpretation of the Immigration and
5 Nationality Act's (INA) detention provisions.

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

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

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

22 5. Petitioner's detention on this basis violates the plain language of the
23 INA. Section 1225(b)(2)(A) does not apply to individuals like Petitioner who
24 previously entered and are now residing in the United States. Instead, such
25 individuals are subject to a different statute, § 1226(a), that allows for release on
26 conditional parole or bond. That statute expressly applies to people who, like
27 Petitioner, are charged as inadmissible for having entered the United States without
28 inspection.

REQUIREMENTS OF 28 U.S.C. § 2243

14. 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 “summarily hear and determine the facts, and dispose of the matter as law and justice require.” *Id.*

15. 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

16. Petitioner is a 43-year-old native and citizen of Mexico. He has been in immigration detention since February 4, 2026. ICE did not set bond and Petitioner is unable to obtain review of his custody by an immigration judge (IJ), pursuant to the Board’s decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). Petitioner is in custody and under the direct control of Respondents and their agents.

17. Respondent Luis Rosa Jr. is Warden of the Central Arizona Florence Correctional Center, where Petitioner is detained. Respondent Rosa has immediate physical custody of Petitioner and he is sued in his official capacity.

18. Respondent Director is the Director of the Phoenix Field Office of ICE’s Enforcement and Removal Operations division. As such, Director is a legal custodian of Petitioner, is responsible for Petitioner’s detention and removal, and has authority to release him. He/she is named in his/her official capacity.

19. Respondent Todd M. Lyons is the Acting Director of ICE, which is the

1 federal agency responsible for implementing and enforcing the INA, including the
2 detention and removal of noncitizens. Respondent Lyons has control over the
3 actions of Respondent Director and ICE in general. Respondent Lyons is a legal
4 custodian of Petitioner and is sued in his official capacity.

5 20. Respondent Markwayne Mullin is the DHS Secretary. He is
6 responsible for the implementation and enforcement of the INA, and oversees ICE,
7 which is responsible for Petitioner's detention. Respondent Mullin is a legal
8 custodian of Petitioner and is sued in his official capacity.

9 21. Respondent Todd Blanche is the Attorney General of the United
10 States. He is responsible for the Department of Justice (DOJ), of which EOIR and
11 the immigration court system it operates is a component agency. Respondent
12 Blanche is a legal custodian of Petitioner and is sued in his official capacity.

13 22. Respondent Daren K. Margolin is the Director of EOIR, which is the
14 federal agency responsible for implementing and enforcing the INA in removal
15 proceedings, including for custody redeterminations in bond hearings. Respondent
16 Margolin is sued in his official capacity.

17 **LEGAL FRAMEWORK**

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

20 24. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in
21 standard removal proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals in §
22 1226(a) detention are generally entitled to a bond hearing at the outset of their
23 detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been
24 arrested, charged with, or convicted of certain crimes are subject to mandatory
25 detention, *see* 8 U.S.C. § 1226(c).

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

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

4 27. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted
5 as part of the Illegal Immigration Reform and Immigrant Responsibility Act
6 (IIRIRA) of 1996, Pub. L. No. 104–208, Div. C, §§ 302–03, 110 Stat. 3009–546,
7 3009–582 to 3009–583, 3009–585. Section 1226(a) was most recently amended
8 earlier this year by the Laken Riley Act, Pub. L. No. 119–1, 139 Stat. 3 (2025).

9 28. Following the enactment of the IIRIRA, EOIR drafted new regulations
10 explaining that, in general, people who entered the country without inspection were
11 not considered detained under § 1225 and that they were instead detained under §
12 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal
13 of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg.
14 10312, 10323 (Mar. 6, 1997); *see also* 8 C.F.R. §§ 236.1, 1236.1, 1003.19.

15 29. Thus, in the decades that followed, most people who entered without
16 inspection and were placed in standard removal proceedings received bond hearings,
17 unless their criminal history rendered them ineligible pursuant to 8 U.S.C. § 1226(c).
18 That practice was consistent with many more decades of prior practice, in which
19 noncitizens who were not deemed “arriving” were entitled to a custody hearing
20 before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R.
21 Rep. No. 104–469, pt. 1, at 229 (1996) (noting that § 1226(a) simply “restates” the
22 detention authority previously found at § 1252(a)).

23 30. Section 1226 leaves no doubt that it applies to people who face charges
24 of being inadmissible to the United States, including those who are present without
25 admission or parole.

26 31. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry
27 or who recently entered the United States. The statute’s entire framework is
28 premised on inspections at the border of people who are “seeking admission” to the

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

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

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

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

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

21 36. Since Respondents adopted their new policies, the overwhelming
22 majority of federal courts have rejected their new interpretation of the INA’s
23 detention authorities. Courts have likewise rejected *Matter of Yajure Hurtado*, which
24 adopts the same reading of the statute as ICE.

25 37. Courts have uniformly rejected DHS’s and EOIR’s new interpretation
26 because it defies the INA. The plain text of the statutory provisions demonstrates
27 that § 1226(a), not § 1225(b), applies to people like Petitioner.
28

1 and took him into custody.

2 45. DHS placed Petitioner in removal proceedings before EOIR in
3 Florence, AZ pursuant to 8 U.S.C. § 1229a. ICE has charged Petitioner with, *inter*
4 *alia*, being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as someone who entered
5 the United States without inspection. *See* Exhibit 2.

6 46. Following Petitioner's arrest and detention, ICE issued a custody
7 determination to continue Petitioner's detention without an opportunity to post bond
8 or be released on other conditions.

9 47. Petitioner subsequently requested a bond redetermination hearing
10 before an IJ.

11 48. On April 14, 2026, the IJ denied bond, stating Petitioner "did not show
12 the Court how it had jurisdiction to hold the custody hearing." *See* Exhibit 3.

13 49. As a result, Petitioner has been unlawfully detained for over two
14 months—away from his family, home, and community.

15 **CLAIMS FOR RELIEF**

16 **COUNT I**

17 **Violation of the INA**

18 50. Petitioner incorporates by reference the allegations in the preceding
19 paragraphs.

20 51. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not
21 apply to all noncitizens residing in the United States who are subject to the grounds
22 of inadmissibility. As relevant here, it does not apply to those who previously
23 entered the country and have been residing in the United States prior to being
24 apprehended and placed in removal proceedings by Respondents. Such noncitizens
25 are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or
26 § 1231.

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

COUNT II

Violation of Fifth Amendment Procedural Due Process

53. Petitioner incorporates by reference the allegations in the preceding paragraphs.

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

55. Under *Mathews*, Respondents' decision to arrest Petitioner without any notice or an opportunity to respond, and continue to detain him without any opportunity to meaningfully challenge that detention, clearly violates his procedural due process rights.

56. One of the first inquiries in any case of violation of procedural due process is whether the petitioner has a protected property or liberty interest and, if so, the extent or scope of that interest. *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 569-70 (1972). Reliance on government policies and assurances may give rise to protected expectations under the Due Process Clause. *Perry v. Sindermann*, 408 U.S. 593, 601-03 (1972).

57. First, Petitioner has a legally protectable liberty interest in freedom from detention. The interest in being free from physical detention is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004); *see also Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) ("Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the [Due Process] Clause protects.").

58. Additionally, Petitioner reasonably relied on government policies—in place for decades—that noncitizens who entered without inspection or admission would be detained, if at all, under § 1226(a) and entitled to a bond hearing. This reliance has created a legally protectable liberty interest.

59. Second, the risk of erroneously depriving Petitioner of this liberty interest is severe, as he is separated from his home, and family indefinitely, and has been thrown into sudden instability. He has been afforded absolutely no process, let alone constitutionally sufficient process, prior to or since this deprivation, making the value of additional process high.

60. Third, the Government's interest in detaining Petitioner is minimal. He does not present any flight risk or danger. His detention is thus not rationally related to any purpose. And, additional process would impose little to no burden on the Government, especially in light of the fact that, until last year, the Government had provided detained noncitizens like Petitioner, with bond proceedings. Furthermore, the "fiscal and administrative burdens" of providing Petitioner with a bond hearing are minimal, particularly when weighed against the significant liberty interests at stake. *Mathews*, 424 U.S. at 334-35.

61. Accordingly, Petitioner's continued detention without an opportunity to be heard violates his procedural due process rights under the Fifth Amendment of the U.S. Constitution.

COUNT III

Violation of Fifth Amendment Substantive Due Process

19 62. Petitioner incorporates by reference the allegations in the preceding
20 paragraphs.

63. The Supreme Court has long recognized that noncitizens physically present in the United States are entitled to due process protections, regardless of their immigration status. *Zadvydas*, 533 U.S. at 693; *Mathews v. Diaz*, 426 U.S. 67, 77 (1976). “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the [Due Process] Clause protects.” *Zadvydas*, 533 U.S. at 690.

64. To comply with the Due Process Clause, detention must always bear “some reasonable relation to the purpose for which the individual was committed.” *Jackson v. Indiana*, 406 U.S. 715, 738 (1972).

65. The only legitimate purpose, consistent with due process, for federal civil immigration detention is to prevent flight risk and ensure the detained person's attendance for legal hearings adjudicating their status or potential removal, or to otherwise ensure the safety of the community. *Zadvydas*, 533 U.S. at 690-91.

66. Here, Petitioner's detention is not reasonably related to its purpose. There is no reason to believe that Petitioner would not attend any immigration proceedings. He has resided in the United States for 20 years and has four U.S. citizen children. He has made a life here and has no intention or reason to abscond from his family, community, or business.

67. Moreover, Petitioner has no criminal history and poses no threat to public safety. His detention is not necessary to protect the community and Respondents have not claimed that it is. Even if they had, Respondents cannot justify his detention on those grounds absent “strong procedural protections.” *Zadvydas*, 533 U.S. at 690-91. Yet, Petitioner was provided no notice that he would be detained and no opportunity to dispute any claims that he is a danger to the community or is likely to abscond. Petitioner’s continued detention causes severe hardship to his family who require his emotional, financial, and physical support.

68. Petitioner's continued detention is unrelated to the purposes justifying it as a constitutional matter, and therefore contravenes the fundamental due process protections of the Fifth Amendment of the U.S. Constitution.

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 U.S. District Court for the District of Arizona while this habeas petition is pending;

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

3 d. Issue a Writ of Habeas Corpus requiring that Respondents release
4 Petitioner or, in the alternative, provide Petitioner with a bond hearing pursuant to
5 8 U.S.C. § 1226(a) within seven days;

6 e. Declare that Petitioner's detention is unlawful;

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

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

12 Respectfully submitted,

13 /s/ Peter Herberg

14 Peter Herberg

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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Sergio Hernandez Ramirez, and submit this verification on his behalf. I verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge. Dated this 22nd day of April, 2026.

/s/ Peter Herberg

Peter Herberg

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