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**IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

Fidel SANTIBANEZ SANCHEZ,  
Petitioner,  
v.

Christopher J. LAROSE, Warden, Otay Mesa  
Detention Center; Kenneth C. SMITH, Acting  
San Diego Field Office Director, Enforcement  
and Removal Operations, United States  
Immigration and Customs Enforcement (ICE);  
Markwayne MULLIN, Secretary, United States  
Department of Homeland Security; Todd  
BLANCHE, Acting Attorney General of the  
United States; Daren K. MARGOLIN, Director,  
Executive Office for Immigration Review,  
Respondents.

Case No. '26CV2779 AGS AHG

**PETITION FOR WRIT OF  
HABEAS CORPUS**

Agency Case Number:



1 **I. INTRODUCTION**

- 2 1. Utah Counsel are licensed to practice in and reside in Utah. Utah counsel will  
3 submit applications for pro hac vice admission in this matter.  
4
- 5 2. Petitioner **Fidel Santibanez Sanchez** is a citizen of Mexico who has resided  
6 continuously in the interior of the United States since his entry without inspection,  
7 over twenty-five years ago. He is presently detained by Immigration and Customs  
8 Enforcement ("ICE") at the Otay Mesa Detention Center in San Diego, California.  
9
- 10 3. Petitioner entered the United States without inspection and has resided  
11 continuously in the interior of the United States since his entry. He was not  
12 apprehended at or near the border. (Exhibit B; D.)  
13
- 14 4. Prior to February 2026, Petitioner had resided in the United States for over twenty-  
15 five years without encountering immigration enforcement officials. (Exhibit D.)  
16
- 17 5. Petitioner has never been convicted of any crime. His record consists exclusively  
18 of minor traffic infractions, all resolved by payment of fines. He has no conviction  
19 that would trigger mandatory detention under 8 U.S.C. § 1226(c).  
20
- 21 6. In October 2025, Petitioner was arrested by Utah police on suspicion of theft by  
22 deception and forgery. On December 3, 2025, the Salt Lake County District  
23 Attorney filed two counts: (1) Theft by Deception, a Third Degree Felony; and (2)  
24 Forgery, a Third Degree Felony. These charges arose from a fraudulent check — a  
25 sophisticated copy of a past payroll check issued by Petitioner's employer,   
26  — that was deposited into Petitioner's account by an unauthorized third  
27 party.  
28

- 1 7. Alta Bank, the corporate banking partner of [REDACTED] conducted a rigorous  
2 forensic investigation and determined conclusively that the fraudulent activity did  
3 not originate from Petitioner's mobile device, personal email, or physical actions.  
4
- 5 8. Alta Bank has fully exonerated Petitioner and made [REDACTED] whole for the  
6 full amount. [REDACTED] — the company identified as  
7 the financial victim in the criminal case — has written a sworn, notarized letter  
8 dated March 3, 2026, confirming Petitioner's full exoneration by Alta Bank and  
9 attesting that Petitioner "was cleared of any wrongdoing." [REDACTED] confirmed  
10 these facts to the prosecutor by email on March 19, 2026. All charges have been  
11 dismissed with prejudice. (Exhibit E; F.)  
12
- 13 9. On February 10, 2026, at approximately 11:04 AM, ICE ERO Officers arrested  
14 Petitioner at the Salt Lake County District Court, 450 S. State Street, Salt Lake  
15 City, Utah — a courthouse far removed from any border or port of entry. (Exhibit  
16 B.)  
17
- 18 10. Deportation Officer DH11332 Holani of the Salt Lake City ICE Field Office  
19 served Petitioner with a Notice to Appear initiating removal proceedings. (Exhibit  
20 C.)  
21
- 22 11. ICE subsequently transported Petitioner to California because ICE does not  
23 maintain a detention facility in Utah. (Exhibit A.)  
24
- 25 12. Petitioner has been held at the Otay Mesa Detention Center, 7488 Calzada De La  
26 Fuente, San Diego, California 92154, since February 16, 2026. (Exhibit A; B.)  
27  
28

1 13. Petitioner, by and through the above-named counsel of record, submits this  
2 Petition for Writ of Habeas Corpus against the above-named Respondents because  
3 he is being unlawfully detained—held without bond—in contravention of the  
4 laws, regulations, and Constitution of the United States.  
5

6 14. Petitioner's detention is not the result of any individualized determination of flight  
7 risk or danger. Instead, it is based on a recent and sweeping reinterpretation of the  
8 Immigration and Nationality Act ("INA"), reflected in agency guidance and the  
9 Board of Immigration Appeals' decision in *Matter of Yajure-Hurtado*, 29 I&N  
10 Dec. 216 (BIA 2025).  
11

12 15. This new interpretation represents a sharp break from decades of uniform statutory  
13 interpretation, implementing regulations, and agency practice. For nearly thirty  
14 years following IIRIRA, individuals like Petitioner—long-term residents  
15 encountered in the interior—were detained under **8 U.S.C. § 1226** and afforded  
16 bond hearings.  
17

18 16. Petitioner is a member of the "Bond Eligible Class" as defined by the District  
19 Court of the Central District of California.  
20

21 17. That class is defined as: "All noncitizens in the United States without lawful status  
22 who (1) have entered or will enter the United States without inspection; (2) were  
23 not or will not be apprehended upon arrival; and (3) are not or will not be subject  
24 to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the  
25 Department of Homeland Security makes an initial custody determination."  
26

27 *Maldonado-Bautista v. Santacruz Jr. et al.*, 5:25-cv-01873-SSS-BFM (Amended  
28

1 Order Consolidating the Court's Orders on Motion for Partial Summary Judgment,  
2 Class Certification, and Application for Reconsideration or Clarification,  
3 December 18, 2025).  
4

- 5 18. The Ninth Circuit Court of Appeals has stayed the class certification and  
6 declaratory relief provisions of that order outside of the Central District of  
7 California, pending appellate review. *Bautista v. U.S. Dep't of Homeland Sec.*, No.  
8 26-1044 (9th Cir. Mar. 6, 2026; Mar. 31, 2026).  
9
- 10 19. Petitioner is detained in the Southern District of California. Accordingly, the class-  
11 wide declaratory relief does not automatically apply, and Petitioner brings this  
12 individual petition for habeas relief.  
13
- 14 20. Judges across multiple districts have routinely held that members of this class or  
15 similarly defined groups are not lawfully subject to mandatory detention without  
16 bond, nor are they "seeking admission." *Huerta v. Bondi*, 1:25-cv-00941-JLT-  
17 HBK, at \*13 (E.D. Cal. Jan. 9, 2026); *Moreno Vergel v. Chestnut*, 2026 WL  
18 32848, at \*3 (E.D. Cal. Jan. 6, 2026) (collecting cases); *Aquino v. LaRose*, 2025  
19 WL 3158676, at \*3 (S.D. Cal. Nov. 12, 2025) (collecting cases); *Contreras*  
20 *Cervantes v. Raycraft*, 2025 WL 2952796, at \*8, n.4 (E.D. Mich. Oct. 17, 2025)  
21 (collecting cases); *Echevarria v. Bondi*, 2025 WL 2821282, at \*7 (D. Ariz. Oct. 3,  
22 2025) (collecting cases); *Barco Mercado v. Francis*, 2025 WL 3295903, at \*4  
23 (S.D.N.Y. Nov. 26, 2025).  
24  
25  
26
- 27 21. Nevertheless, because Respondents continue to assert that their legal interpretation  
28 governs all the nation's Immigration Judges, Petitioner is forced to seek a Writ of

1 Habeas Corpus from this Court in order to obtain a bond hearing with an  
2 Immigration Judge.

3  
4 22. Petitioner has not been convicted of any crime that would disqualify him from  
5 receiving a bond hearing in immigration court.

6 23. Nevertheless, Respondents continue to detain Petitioner without bond, denying  
7 him any opportunity to seek release based on individualized circumstances.

8  
9 24. Petitioner additionally anticipates that DHS may argue that his detention is  
10 governed by the Laken Riley Act, Pub. L. No. 119-1 (2025), based on the  
11 dismissed charges. Any such argument is without merit: charges that are dismissed  
12 with prejudice—because the Petitioner was the victim, not the perpetrator—cannot  
13 constitute a lawful basis for mandatory detention.  
14

15 25. Petitioner's continued detention—based solely on Respondents' categorical  
16 application of § 1225(b) to all persons present without admission—is unlawful,  
17 ultra vires, and violates the Fifth Amendment.  
18

19 **II. JURISDICTION**

20  
21 26. Petitioner is in the physical custody of Respondents, detained at the Otay Mesa  
22 Detention Center, San Diego, California.

23 27. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28  
24 U.S.C. § 1331 (federal question), Article I, Section 9, Clause 2 of the United  
25 States Constitution (the Suspension Clause), and 5 U.S.C. § 702.  
26  
27  
28

1 28. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory  
2 Judgment Act, 28 U.S.C. § 2201 et seq., 5 U.S.C. § 706, and the All Writs Act, 28  
3 U.S.C. § 1651.  
4

### 5 **III. VENUE**

6 29. Pursuant to *Rumsfeld v. Padilla*, 542 U.S. 426 (2004), venue lies in the district of  
7 confinement. Petitioner is currently confined within the Southern District of  
8 California.  
9

10 30. Venue is also proper under 28 U.S.C. § 1391(e) because Respondents are  
11 employees, officers, and agencies of the United States, and because a substantial  
12 part of the events or omissions giving rise to the claims occurred in California.  
13

14 31. Petitioner was taken into ICE custody in Utah before being moved to California,  
15 demonstrating that ICE's detention decisions—not Petitioner's residence—control  
16 venue.  
17

### 18 **IV. REQUIREMENTS OF 28 U.S.C. § 2243**

19 32. The Court must grant the petition for writ of habeas corpus or order Respondents  
20 to show cause "forthwith," unless the Petitioner is not entitled to relief. 28 U.S.C.  
21 § 2243. If an order to show cause is issued, the Respondents must file a return  
22 "within three days unless for good cause additional time, not exceeding twenty  
23 days, is allowed." *Id.*  
24

25 33. Habeas corpus is "perhaps the most important writ known to the constitutional  
26 law . . . affording as it does a *swift* and imperative relief in all cases of illegal  
27  
28

1 restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis  
2 added).

3  
4 **V. PARTIES**

5 34. Petitioner **Fidel Santibanez Sanchez** is a citizen of Mexico, born [REDACTED]  
6 [REDACTED] in San Lucas, Michoacan, Mexico, as confirmed by his certified birth  
7 certificate issued by the Civil Registry of the State of Michoacan (Civil Registry  
8 No. [REDACTED]). Petitioner has resided in the United States continuously since his  
9 entry without inspection, over twenty-five years ago. He has been in immigration  
10 detention since February 10, 2026, and at the Otay Mesa Detention Center since  
11 February 16, 2026. (Exhibit A; D.)  
12

13  
14 35. Petitioner has significant ties to the United States. He resides at [REDACTED]  
15 [REDACTED] Utah 84104, with his wife, Sophia Poldo, a  
16 United States Citizen, and their son, [REDACTED] also a United  
17 States Citizen. Petitioner has been employed in the construction industry and has  
18 no criminal convictions, outside of minor traffic offenses. (Exhibit D.)  
19

20  
21 36. ICE did not possess or execute a judicial warrant for Petitioner's arrest. The  
22 government's own I-213 confirms that Petitioner was arrested at the Salt Lake  
23 County District Court pursuant only to a Warrant of Arrest/Notice to Appear  
24 issued by ICE. DHS's database check returned a NEGATIVE result for  
25 immigration history, confirming this was Petitioner's first encounter with  
26 immigration enforcement. The NCIC check for outstanding federal criminal wants  
27 or warrants also returned NEGATIVE. (Exhibit B.)  
28

1 37. Respondent **Christopher J. LaRose** is employed by CoreCivic as Warden of the  
2 Otay Mesa Detention Center. Mr. LaRose has immediate physical custody of  
3 Petitioner. He is sued in his official capacity.  
4

5 38. Respondent **Kenneth C. Smith** is the Acting Director of the San Diego Field  
6 Office of ICE's Enforcement and Removal Operations Division. As such, Mr.  
7 Smith is responsible for Petitioner's detention and removal. He is named in his  
8 official capacity.  
9

10 39. Respondent **Markwayne Mullin** is the Secretary of the Department of Homeland  
11 Security, responsible for the implementation and enforcement of the Immigration  
12 and Nationality Act (INA) and overseeing ICE, which is responsible for  
13 Petitioner's detention. Mr. Mullin has ultimate custodial authority over Petitioner  
14 and is sued in his official capacity.  
15

16 40. Respondent **Todd Blanche** is the Acting Attorney General of the United States,  
17 responsible for the Department of Justice, of which the Executive Office for  
18 Immigration Review (EOIR) is a component agency. He is sued in his official  
19 capacity.  
20

21 41. Respondent **Daren K. Margolin** is the Director of the Executive Office for  
22 Immigration Review (EOIR), the federal agency within the Department of Justice  
23 responsible for implementing and enforcing the INA in removal proceedings,  
24 including custody redetermination in bond hearings.  
25

26 42. All Respondents are sued in their professional capacity.  
27

28 **VI. FACTUAL BACKGROUND**

1 43. Petitioner **Fidel Santibanez Sanchez** is a citizen of Mexico, born [REDACTED]  
2 [REDACTED] in San Lucas, Michoacan, Mexico. His citizenship and identity are  
3 confirmed by his certified birth certificate, Civil Registry No. [REDACTED], issued by  
4 the Civil Registry of the State of Michoacan.  
5

6 44. Petitioner entered the United States without inspection over twenty-five years ago  
7 and has been continuously present in the United States since his entry. He was not  
8 apprehended at or near the border at the time of entry and has lived in the interior  
9 of the United States since his entry. (Exhibit D.)  
10

11 45. Petitioner has settled in Utah and has built his life in the United States,  
12 establishing significant personal, familial, and community ties. He resides at [REDACTED]  
13 [REDACTED] Utah 84104. He is married to Sophia  
14 Pulido, a United States Citizen, who resides at the same address. Together they  
15 have a son, [REDACTED] who is a United States Citizen.  
16 Petitioner is employed full-time at [REDACTED] a Utah construction company,  
17 where he has worked since May 13, 2024. [REDACTED] CEO of [REDACTED]  
18 [REDACTED] describes Petitioner as “a pillar of our operations and an exemplary  
19 employee” who “maintains a perfect attendance record.” During his employment,  
20 Petitioner has obtained OSHA 10 federal safety certification, Confined Space  
21 Certification, First Aid Certification, Scissor Lift and Boom Lift Certifications,  
22 and leads Daily Job Hazard Analysis training. CEO [REDACTED] further states that  
23 Petitioner is “a deeply caring father and grandfather” and “a man of integrity.”  
24 These facts are confirmed both by the government’s own I-213 (which notes  
25  
26  
27  
28

1 employment in construction) and by CEO Boynton's sworn, notarized letter of  
2 March 3, 2026. (Exhibits B; F.)

3  
4 46. Prior to his arrest in 2026, Petitioner had not been previously apprehended by  
5 immigration authorities, nor had he previously been placed in removal  
6 proceedings.

7  
8 47. Petitioner's criminal record consists exclusively of minor traffic infractions, none  
9 of which trigger mandatory detention under 8 U.S.C. § 1226(c).

10 48. In October 2025, Petitioner was arrested by Utah law enforcement on suspicion of  
11 theft by deception and forgery.

12  
13 49. The Utah State Information (criminal charges) filed based on this arrest have now  
14 been dismissed, as the bank involved has fully exonerated Petitioner. (Exhibit E;  
15 F).

16  
17 50. Subsequent to the arrest, Petitioner was encountered and taken into ICE custody in  
18 the interior of the United States.

19 51. He was taken into ICE custody more than twenty-five years after his entry, and far  
20 removed in both time and place from the border.

21  
22 52. Specifically, as documented in the government prepared I-213, ICE ERO Officers  
23 apprehended Petitioner at the Salt Lake County District Court, 450 S. State Street,  
24 Salt Lake City, Utah, on February 10, 2026, at 11:04 AM. The method of location  
25 is designated "NCA" (Non-Criminal Arrest).

26  
27 53. Petitioner's immigration history check returned NEGATIVE, confirming he had  
28 never before been encountered by immigration enforcement.

- 1 54. DHS initiated removal proceedings against Petitioner by issuing him a Notice to  
2 Appear pursuant to 8 U.S.C. § 1229a on February 10, 2026. (Exhibit C).
- 3  
4 55. Following his detention by ICE, Petitioner was moved through the detention  
5 system and transferred to the Otay Mesa Detention Center, San Diego, California,  
6 where he is currently detained, because ICE does not have a detention facility in  
7 Utah. (Exhibit A.)  
8
- 9 56. Despite his long-term presence in the United States and arrest in the interior, ICE  
10 has classified Petitioner as subject to mandatory detention without bond pursuant  
11 to 8 U.S.C. § 1225(b)(2)(A).  
12
- 13 57. This classification is due to a ruling issued by the Board of Immigration Appeals  
14 (BIA), (the appellate branch of the Executive Office for Immigration Review,  
15 directed by Respondent Margolin (EOIR)) on September 5, 2025.  
16
- 17 58. The decision, *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) holds that  
18 EOIR employee Immigration Judges do not have statutory authority to consider  
19 bond requests or to grant bonds to any foreign national who entered without  
20 inspection (and is therefore an inadmissible individual), regardless of length of  
21 residence or ties to the U.S.  
22
- 23 59. Since the Yajure Hurtado decision, immigration judges across the U.S. are  
24 instructing immigration counsel not to “waste the IJ’s time” requesting a bond  
25 hearing where the foreign national entered without inspection, regardless of the  
26 length of the foreign national’s presence in the United States, or the foreign  
27 national’s ties to the United States.  
28

- 1 60. *Matter of Yajure Hurtado* contradicts or ignores the U.S. constitution, the statutory  
2 language, the record of Congressional intent, the IRRIRA implementing  
3 regulations (which it directly overrules), and more than two decades of Supreme  
4 Court, Federal Court, and BIA precedent, including a precedent decision issued  
5 June 30, 2025, (*Matter of Akhmedov*, 29 I&N Dec. 166 (BIA 2025)).  
6  
7 61. As applied to this Petitioner, the agency's ruling in *Matter of Yajure Hurtado* is an  
8 unconstitutional violation of his right to due process of law.  
9  
10 62. Section 1225(b)(2)(A), by its plain terms, applies only to individuals who are  
11 actively "seeking admission" into the United States. *See, e.g., Esquivel-Ipina v.*  
12 *LaRose*, No. 25-CV-2672-JLS-BLM, 2025 WL 2998361 (S.D. Cal. Oct. 24,  
13 2025).  
14  
15 63. Multiple judges in this district have found that applying § 1225(b)(2)(A) to  
16 mandate detention without bond of individuals detained in the interior after  
17 lengthy residency in the U.S. is neither statutory nor constitutional. *See, e.g.,*  
18 *Vasquez Garcia v. Noem*, No. 25-CV-02180-DMS-MMP, 2025 WL 2549431  
19 (S.D. Cal. Sept. 3, 2025).  
20  
21 64. Federal courts nationwide have similarly held, more often than not, that the phrase  
22 "seeking admission" requires that the individual be "presently and actively seeking  
23 lawful entry into the United States." *Loa Caballero v. Baltazar*, No. 25-cv-03120-  
24 NYW, 2025 WL 2977650, at \*6 (D. Colo. Oct. 22, 2025); see also *J.A.C.P. v.*  
25 *Wofford*, No. 1:25-cv-01354-KES-SKO, Doc. 13 (E.D. Cal. Oct. 27, 2025)  
26  
27 (granting preliminary injunction and ordering release because § 1225(b)(2)(A)  
28

1 does not apply to noncitizens already residing in the United States); *Lopez Benitez*  
2 *v. Francis*, No. 25 Civ. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13,  
3 2025); *Martinez v. Hyde*, No. CV 25-11613-BEM, 2025 WL 2084238 (D. Mass.  
4 July 24, 2025).

5  
6 65. Petitioner is detained civilly, based on no criminal charge, and he is being held  
7 without any individualized determination that he poses a danger to the community  
8 or a risk of flight.

9  
10 66. Petitioner continues to suffer ongoing deprivation of liberty as a result of this  
11 detention.  
12

## 13 **VII. LEGAL FRAMEWORK**

### 14 **A. Statutory Framework**

15 67. The Fifth Amendment to the United States Constitution provides that no person  
16 shall be deprived of liberty without due process of law.  
17

18 68. Freedom from physical detention lies at the core of the liberty protected by the  
19 Due Process Clause. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

20  
21 69. "[T]he Due Process Clause applies to all 'persons' within the United States,  
22 including aliens, whether their presence is lawful, unlawful, temporary, or  
23 permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *Shaughnessy v. United*  
24 *States ex rel. Mezei*, 345 U.S. 206, 212 (1953) ("[A]liens who have once passed  
25 through our gates, even illegally, may be expelled only after proceedings  
26 conforming to traditional standards of fairness encompassed in due process of  
27 law").  
28

1 70. The Supreme Court "has repeatedly recognized that civil commitment for any  
2 purpose constitutes a significant deprivation of liberty that requires due process  
3 protection," including an individualized detention hearing. *Addington v. Texas*,  
4 441 U.S. 418, 425 (1979) (collecting cases); *see also Salerno*, 481 U.S. at 755  
5 (requiring individualized hearing and strong procedural protections for detention  
6 of people charged with federal crimes); *Foucha v. Louisiana*, 504 U.S. 71, 81-83  
7 (1992) (same for civil commitment for mental illness); *Kansas v. Hendricks*, 521  
8 U.S. 346, 357 (1997) (same for commitment of sex offenders).

9  
10  
11 71. In 1996, acting within the recognized constraints of constitutional due process,  
12 Congress rebalanced and codified three explicit detention regimes for noncitizens.  
13 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Pub. L.,  
14 No. 104-208, Div. C. §§ 302-03, 110 Stat. 3009-546, 3009-582 to 3009-583, 3009-  
15 585.  
16

17  
18 72. First, as found in 8 U.S.C. § 1225, the statute provides for detention without bond  
19 of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for  
20 other arriving aliens, as defined at 8 C.F.R. §§ 1.2 and 1001.1(q).  
21

22 73. Second, 8 U.S.C. § 1226 authorizes the issuance of administrative warrants for the  
23 detention of noncitizens for standard removal proceedings before an Immigration  
24 Judge. See 8 U.S.C. § 1229a.  
25

26 74. Individuals arrested and detained pursuant to the procedures of § 1226 are  
27 presumed to be entitled to a bond hearing at the outset of their detention, *see* 8  
28 C.F.R. §§ 1003.19(a), 1236.1(d), unless they have been arrested, charged with, or

1 convicted of certain crimes, in which case they are subject to mandatory detention,  
2 *see* 8 U.S.C. § 1226(c).

3  
4 75. Finally, 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. §  
6 1231(a)-(b).

7  
8 76. This case concerns the detention provisions at §§ 1225 and 1226. The detention  
9 provisions at § 1225 and § 1226 were enacted in 1996 as part of IIRIRA.

10 77. Section 1226(a) was most recently amended in January 2025 by the Laken Riley  
11 Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).

12  
13 **B. The Regulatory History Confirms That Interior EWIs Are Governed by § 1226**

14  
15 78. Following the enactment of IIRIRA, EOIR drafted new regulations establishing  
16 that, in general, people who entered the country without inspection were not  
17 subject to the border detention regime of § 1225 and that they were instead subject  
18 to the detention provisions of § 1226. *See* Inspection and Expedited Removal of  
19 Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings;  
20 Asylum Procedures, 63 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

21  
22 79. Those regulations are consistent with the record of Congressional intent, as  
23 documented in the Report of the Committee on the Judiciary on H.R. 2202, Report  
24 No. 104-469, 229, Part I (March 4, 1996) (noting that § 1226(a) simply "restates"  
25 the detention authority previously found at § 1251(a)) and in the Report of the  
26 Conference Committee, Report No. 104-828 (September 24, 1996).  
27  
28

1 80. The Congressional record shows that Congress was very aware during the drafting  
2 of IIRIRA of the constitutional parameters within which they were working. That  
3 includes the robust precedent establishing that persons present in the U.S.,  
4 regardless of their manner of entry, are constitutionally entitled to due process of  
5 law, including when they are subject to civil detention. *See, e.g., Yick Wo v.*  
6 *Hopkins*, 118 U.S. 356 (1886); *Yamataya v. Fisher* (Japanese Immigrant Case),  
7 189 U.S. 86 (1903); *Plyler v. Doe*, 102 S. Ct. 2382 (1982).  
8  
9

10 81. The regulations published at 63 Fed. Reg. 10312, 10323 (Mar. 6, 1997) were also  
11 consistent with the constitutionally recognized procedures of decades of prior  
12 practice, in which noncitizens present in the U.S.—noncitizens who were not  
13 seeking admission at the U.S. Border—were entitled to a custody hearing before  
14 an Immigration Judge or other hearing officer.  
15

16 82. As explicitly set out in the implementing regulations, individuals (like the  
17 Petitioner) arrested and detained in the interior of the United States after months,  
18 years, or decades of physical presence in the U.S., are presumed to be entitled to a  
19 bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a),  
20 1236.1(d), unless they have been arrested, charged with, or convicted of certain  
21 crimes, in which case they are subject to mandatory detention, *see* 8 U.S.C. §  
22 1226(c).  
23  
24  
25

26 **C. The Government's Contemporaneous Regulations Explicitly Rejected the**  
27 **Interpretation Now Asserted**  
28

1 83. Respondents' predecessor agencies initially proposed regulations that would have  
2 done precisely what Respondents now assert Congress intended. The proposed  
3 regulations published in January 1997 included explicit language stating, with  
4 regard to 8 U.S.C. § 1226: "An immigration judge may not exercise authority  
5 provided in this section and the review process described in paragraph (d) of this  
6 section shall not apply with respect to: (i) inadmissible aliens in removal  
7 proceedings." 62 F.R. 444, 483 (January 3, 1997) [236.1(c)(5)(i)].  
8  
9

10 84. Had that regulation remained as proposed, *Matter of Yajure Hurtado* would have  
11 been unnecessary: instead, it would have been the law for the past nearly thirty  
12 years.  
13

14 85. But in 1997, when the government published the final regulations, that proposed  
15 language was explicitly and deliberately removed, with the following explanation:  
16

17 The supplementary information stated the  
18 Department's intended approach, and clause (i) of the proposed  
19 regulation was in error. Accordingly, the interim rule removes  
20 paragraph (c)(5)(i) of § 236.1 and renumbers the remaining  
21 paragraphs (c)(5)(ii), (iii), and (iv). The effect of this change is that  
22 inadmissible aliens, except for arriving aliens, have available to them  
bond redetermination hearings before an immigration judge, while  
arriving aliens do not.

23 62 F.R. 10312, 10323 (March 6, 1997). Compare 62 F.R. 10312,  
24 10361 [236.1(c)(5)(i)] with 62 F.R. 444, 483 [236.1(c)(5)(i)].  
25

26 86. In other words, the BIA's assertion in *Yajure Hurtado* that Immigration Judges do  
27 not have authority to adjudicate bonds for any inadmissible alien (otherwise  
28

1 defined in 8 U.S.C. § 1225(a) as an "applicant for admission") was considered and  
2 explicitly rejected when the implementing regulations were published in 1997.

3  
4 87. The Ninth Circuit has held that an executive branch agency such as the BIA  
5 cannot 'overrule' by adjudication regulations that were promulgated after notice  
6 and comment. *Patel v. INS*, 638 F.2d 1199, 1202 (9th Cir. 1980).

7  
8 **D. The DHS Interim Guidance and the BIA's Yajure Hurtado Decision**

9  
10 88. In the decades that followed implementation of IIRIRA, the common  
11 understanding of the law was that 8 U.S.C. § 1226 applied to nearly everyone who  
12 entered the United States without inspection. Persons such as the Petitioner—  
13 noncitizens present in the United States who have never applied for admission or  
14 presented themselves for inspection (the class of persons who "entered without  
15 inspection" or EWIs as they are routinely labeled)—were routinely arrested based  
16 on the warrant and other procedures set out in § 1226.

17  
18  
19 89. Despite the regulations and the nearly three decades of practical implementation,  
20 DHS on July 8, 2025 published a notice titled "Interim Guidance Regarding  
21 Detention Authority for Applicants for Admission." The notice was disseminated  
22 internally to all ICE employees. The memo was leaked to the American  
23 Immigration Lawyers Association ("AILA"). *See* ICE Memo: Interim Guidance  
24 Regarding Detention Authority for Applications for Admission, AILA Doc. No.  
25 25071607 (July 8, 2025).  
26  
27  
28

1 90. Judge Boulware of the District of Nevada provides a persuasive description of the  
2 contents of this notice:

3  
4 The Notice indicated that DHS, in coordination with the DOJ,  
5 'revisited its legal Position' on the INA and determined that §  
6 1225(b)(2), rather than § 1226, is the applicable immigration  
7 authority for any alien present in the U.S. 'who has not been  
8 admitted. . . whether or not at a designated port of arrival.'  
9 Accordingly, 'it is the position of DHS that such aliens are subject to  
10 [mandatory] detention under INA § 235(b) and may not be released  
11 from ICE custody except by INA § 212(d)(5) parole.' The Notice  
12 further provides '[t]hese aliens are also ineligible for a custody  
13 redetermination hearing (bond hearing) before an immigration judge  
14 and may not be released for the duration of their removal  
15 proceedings absent a parole by DHS. For custody purposes, these  
16 aliens are now treated in the same manner that 'arriving aliens' have  
17 historically been treated.'

18 *Vasquez v. Feeley*, supra, pp. 8-9.

19 91. On September 5, 2025, the Board of Immigration Appeals (BIA) confirmed and  
20 ratified the statutory interpretation and policy first published in the July 8 memo in  
21 the precedent decision, *Matter of Yajure Hurtado*, supra. In that precedent  
22 decision, the BIA formally agreed with the statutory interpretation as laid out in  
23 the July 8, 2025 ICE memo.

24  
25 92. In other words, since September 5, 2025, despite the conflicting regulatory  
26 language, express Congressional intent, and long-standing constitutional due  
27 process requirements, it has been the explicit legal position of Respondents, the  
28

1 U.S. Department of Justice, Executive Office for Immigration Review (EOIR),  
2 that all non-citizens present within the United States who have not been lawfully  
3 admitted are subject to mandatory detention without bond, regardless of the length  
4 of their physical presence or their ties to the United States.  
5

6 **E. Courts Have Uniformly Rejected the Government’s Interpretation — Including**  
7 **Repeatedly in This District**

8 93. Judges in the Southern District of California — the precise district in which this  
9 case is filed and in which Petitioner is detained — have now decided this question  
10 repeatedly and consistently, ruling that individuals in Petitioner’s circumstances  
11 are governed by § 1226(a) and are entitled to bond hearings. The following cases  
12 are all from this District:  
13

14 a. *Vasquez Garcia v. Noem, supra*, No. 25-CV-02180-DMS-MMP,  
15 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025). One of the first Southern  
16 District decisions on this issue, the case holds that a challenge to detention  
17 without a bond hearing under § 1226(a) is not barred by § 1252(b)(9) and  
18 that § 1226, not § 1225, governs interior EWI detention. Cited repeatedly  
19 by subsequent S.D. Cal. courts as the leading authority in this district.  
20

21 b. *Esquivel-Ipina v. LaRose*, No. 25-CV-2672-JLS-BLM, 2025 WL  
22 2998361 (S.D. Cal. Oct. 24, 2025). Holds that “seeking admission requires  
23 an affirmative act such as entering the United States or applying for status,  
24 and it does not apply to individuals who, like Petitioner, have been  
25 residing in the United States and did not apply for admission or a change  
26 of status.” *Id.* at \*5.

27 c. *Castellanos Lopez v. Warden, Otay Mesa Detention Center*, No. 25-  
28 CV-2527-RSH-SBC, 2025 WL 3005346 (S.D. Cal. Oct. 27, 2025).

Holding that Respondents’ interpretation of “seeking admission” “would

1 render that phrase mere surplusage” rendering it deletable without  
2 affecting meaning, in violation of the canon against surplusage. *Id.* at \*3.  
3 Filed by a petitioner detained at Otay Mesa — the same facility where  
4 Fidel Santibanez is held.

5 d. *Martinez Lopez v. Noem*, No. 25-CV-2717-JES-AHG, 2025 WL  
6 3030457 (S.D. Cal. Oct. 30, 2025). Holding that § 1226(a), not §  
7 1225(b)(2), applies to individuals already residing in the United States.  
8 Compiled cases from multiple circuits rejecting the government’s position.  
9 Cited and followed as the leading S.D. Cal. authority by multiple  
10 subsequent decisions in this district.

11 e. *Bernardo Aquino v. LaRose*, No. 25-CV-02904-RSH-MMP, 2025  
12 WL 3158676 (S.D. Cal. Nov. 12, 2025). Holding that “[t]he overwhelming  
13 majority of courts to address the issue have agreed that Section 1226(a),  
14 rather than the mandatory detention provision of Section 1225(b)(2)(A),  
15 applies to a noncitizen . . . who has resided in the United States for many  
16 years,” and collecting cases from multiple circuits. *Id.* at \*3.

17 f. *Batista de Miranda v. Archambeault*, No. 25-CV-3019-AGS-MSB,  
18 2025 WL 3171736 (S.D. Cal. Nov. 12, 2025). Granting habeas relief and  
19 ordering bond hearing for interior EWI detainee. Cited as part of the  
20 growing body of S.D. Cal. authority.

21 g. *Torres Velasquez v. Noem*, No. 3:25-CV-03046 (S.D. Cal. Nov. 13,  
22 2025). Granting habeas relief, following the reasoning of the S.D. Cal. line  
23 of decisions, and ordering individualized bond hearing.

24 h. *Gutierrez Aquino v. LaRose*, No. 3:2025-CV-03534 (S.D. Cal. Dec.  
25 22, 2025). Government itself conceded that petitioner “is detained under 8  
26 U.S.C. § 1226(a) and is entitled to an order from this Court directing a  
27 bond hearing be held pursuant to 8 U.S.C. § 1226(a)” in light of the  
28 Maldonado-Bautista final judgment. Court granted relief accordingly.

1 i. *Carrillo Gregorio v. LaRose*, No. 25-CV-03322-BAS-BJW, 2025  
2 WL 3653998 (S.D. Cal. Dec. 17, 2025). Granting habeas petition and  
3 ordering bond hearing, citing the established S.D. Cal. precedent that §  
4 1226(a) governs interior EWI detention.

5 j. *Garcia Hernandez v. Otay Mesa Detention Center*, No. 3:2025-CV-  
6 03583 (S.D. Cal. Dec. 24, 2025). Government conceded § 1226(a)  
7 governs. Court granted petition, ordering bond hearing at Otay Mesa  
8 Immigration Court — the same court handling Petitioner’s case.

9 k. *Zayas v. Gordon*, No. 26-CV-00237-BAS-DEB, 2026 WL 266275  
10 (S.D. Cal. Feb. 2, 2026). Granting habeas relief in 2026, confirming this  
11 Court’s continued adherence to the § 1226(a) framework for interior  
12 EWIs.

13 l. *Trujillo v. Noem*, No. 26-CV-00268-BAS-VET, 2026 WL 266496  
14 (S.D. Cal. Feb. 2, 2026). Same. Granting habeas relief for interior EWI  
15 detainees under the § 1226(a) framework.

16 m. *Martinez v. Warden Christopher LaRose*, No. 26-CV-00658 (S.D.  
17 Cal. 2026). Court stated it “has previously held in multiple cases” that  
18 interior EWIs are not subject to mandatory detention under § 1225, citing  
19 *Gregorio*, *Zayas*, and *Trujillo*. Government conceded the point and court  
20 granted the petition.

21 94. Particularly significant is the district-wide pattern: in *Gutierrez Aquino*, *Garcia*  
22 *Hernandez*, and *Martinez*, the government itself conceded that § 1226(a) governs  
23 and that petitioners were entitled to bond hearings. These concessions are  
24 admissions against interest, and indicate that the government’s mandatory  
25 detention position is legally indefensible in this district.  
26  
27  
28

1 95. Those admissions are equally binding on the question presented here, where the  
2 facts are materially identical. The government should not be permitted to concede  
3 this legal question in case after case and then relitigate it against Petitioner.  
4

5 96. Beyond this district, courts across the country have uniformly rejected the  
6 government's position. As the Western District of Washington stated: "Every  
7 district court to address this question has concluded that the government's position  
8 belies the statutory text of the INA, canons of statutory interpretation, legislative  
9 history, and longstanding agency practice." *Rodriguez v. Bostock*, No. 3:25-CV-  
10 05240-TMC, 2025 WL 2782499, at \*1 (W.D. Wash. Sept. 30, 2025). The  
11 government has itself acknowledged that "the weight of authority is not in their  
12 favor." Even counsel for the government has described this wave of habeas  
13 petitions as a "tsunami."  
14  
15  
16

## 17 **VIII. CLAIMS FOR RELIEF**

### 18 **COUNT I: Violation of the Immigration and Nationality Act**

19  
20 97. Petitioner incorporates by reference the facts and law set forth in the preceding  
21 paragraphs.

22 98. Petitioner entered the United States without inspection. He has been present within  
23 the United States for over twenty-five years. He is married to a United States  
24 Citizen, Sophia Poldo, and together they have a United States Citizen son,  
25

26  He is a full-time employee of 

27 where he has worked since May 13, 2024, and where his employer's CEO has  
28

1 submitted a sworn, notarized letter describing him as “a pillar of our operations.”

2 The pending criminal charges against him arise from fraud perpetrated against him  
3 by a third party; his employer and Alta Bank have both concluded he committed  
4 no wrongdoing.  
5

6 99. Respondents’ reinterpretation of 8 U.S.C. § 1225(b)(2)(A) as authority for  
7 detaining Petitioner without bond not only violates the regulations, it seeks to  
8 overrule by agency decision regulations that were promulgated through notice and  
9 comment, an action that the Ninth Circuit has explicitly found to be an abuse of  
10 agency discretion. *Patel v. INS*, 638 F.2d 1199, 1202 (9th Cir. 1980).  
11

12 100. Respondents’ reinterpretation of 8 U.S.C. § 1225(b)(2)(A) as authority for  
13 detaining Petitioner without bond is an unconstitutional interpretation of the  
14 statutory language, without basis in prior precedent or the record of Congressional  
15 intent.  
16

17 101. The Immigration and Nationality Act does not authorize Respondents to detain  
18 Petitioner under 8 U.S.C. § 1225(b) under the circumstances presented here.  
19

20 102. District courts have rejected Respondents’ attempt to apply § 1225 to individuals  
21 encountered in the interior of the United States and instead have held that the  
22 statutory detention authority is found at § 1226, and requires access to a bond  
23 hearing before an Immigration Judge. *See, e.g., Huerta v. Bondi*, No. 1:25-cv-  
24 00941-JLT-HBK, at \*13 (E.D. Cal. Jan. 9, 2026); *Moreno Vergel v. Chestnut*,  
25 2026 WL 32848 (E.D. Cal. Jan. 6, 2026) (collecting cases); *Aquino v. LaRose*,  
26 2025 WL 3158676 (S.D. Cal. Nov. 12, 2025).  
27  
28

1 103. Respondents' interpretation is contrary to the text, structure, and history of the INA  
2 and is therefore ultra vires.

3  
4 **COUNT II: Violation of the Fifth Amendment Due Process Clause**

5 104. Petitioner incorporates all preceding paragraphs as if fully set forth herein.

6 105. The Government may not deprive a person of life, liberty, or property without due  
7 process of law. U.S. Const. amend. V. "Freedom from imprisonment – from  
8 government custody, detention, or other forms of physical restraint – lies at the  
9 heart of the liberty that the Clause protects." *Zadvydas v. Davis*, 533 U.S. 678,  
10 690, 121 S.Ct. 2491, 150 L.Ed.2d. 653 (2001).

11  
12 106. Due process requires that government action be rational and non-arbitrary. *See*  
13 *U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007).

14  
15 107. The Ninth Circuit has also held that "[r]emaining confined in jail when one should  
16 otherwise be free is an Article III injury plain and simple[.]" *Gonzalez v. United*  
17 *States Immigr. & Customs Enft*, 975 F.3d 788, 804 (9th Cir. 2020) (quoting  
18 *Mendia v. Garcia*, 768 F.3d 1009, 1012 (9th Cir. 2014)).

19  
20 108. Petitioner has a fundamental interest in liberty and being free from official  
21 restraint.

22  
23 109. The Government's continued detention of Petitioner, without a bond hearing or  
24 any hearing evaluating whether the United States has a lawful rationale for  
25 continuing to detain Petitioner, is a clear violation of his constitutional right to due  
26 process under the law.  
27  
28

1 110. The Due Process Clause asks whether the government's deprivation of a person's  
2 life, liberty, or property is justified by a sufficient purpose. Here, there is no  
3 question that the government has deprived Petitioner of his liberty.  
4

5 111. The Fifth Amendment provides that no person shall be deprived of liberty without  
6 due process of law.  
7

8 112. Civil immigration detention is permissible only where it is reasonably related to a  
9 legitimate governmental purpose and accompanied by adequate procedural  
10 safeguards.  
11

12 113. Respondents have detained Petitioner without providing any individualized  
13 determination of either the risk he will flee or his danger to society.  
14

15 114. Under *Mathews v. Eldridge*, 424 U.S. 319 (1976), the Court must consider the  
16 private interest affected, the risk of erroneous deprivation, and the government's  
17 interest.  
18

19 115. The private interest at stake—freedom from physical detention—is fundamental.  
20 Petitioner's liberty interest in remaining free from governmental restraint is of the  
21 highest constitutional import.  
22

23 116. The risk of erroneous deprivation is extreme where, as here, Petitioner has been  
24 denied any hearing at all. Under the challenged policy, no individualized inquiry is  
25 ever conducted—the categorical policy forecloses even the possibility of a hearing  
26 regardless of the individual's circumstances.  
27

28 117. Respondents' continued detention of Petitioner is unjustified. Respondents have  
not demonstrated that Petitioner needs to be detained. Immigration detention must

1 further the twin goals of (1) ensuring the noncitizen's appearance during removal  
2 proceedings and (2) preventing danger to the community. Zadvydas, 533 U.S. at  
3 690.  
4

5 118. The government's interest does not justify categorical detention of long-term  
6 residents without individualized process.  
7

8 119. There is no credible argument that Petitioner cannot be safely released back to his  
9 family and community. Petitioner has no criminal convictions despite over twenty-  
10 five years of continuous residence in the United States. The pending charges are  
11 not only expected to be dismissed — they have already been substantively  
12 resolved: Alta Bank conducted a forensic investigation and fully exonerated  
13 Petitioner, and the CEO of the company named as the financial victim has  
14 submitted a sworn, notarized letter to the prosecutor confirming that Petitioner  
15 “was cleared of any wrongdoing.” Petitioner was himself the victim of a brutal  
16 violent crime in 2016 when he was struck unconscious with a metal pipe while  
17 apprehending a shoplifter. He is married to Sophia Poldo, a United States Citizen,  
18 and together they have a U.S. Citizen son, [REDACTED] He is a  
19 full-time employee of [REDACTED] where his CEO describes him as “a pillar of  
20 our operations” with a perfect attendance record and multiple federal safety  
21 certifications. He is a caring father and grandfather with deep community roots.  
22 The government’s own NCIC check returned negative for outstanding criminal  
23 wants or warrants. He has every reason to appear for proceedings and no history of  
24 flight. He is exactly the type of individual who — upon an individualized bond  
25  
26  
27  
28

determination — would be granted release. The government's refusal to even hold that hearing is what is unlawful. (Exhibit D; F.)

120. Prior to September 5, 2025, Petitioner would have been eligible for a bond hearing before an Immigration Judge. Respondents' novel legal theory, reinterpreting statutory language after nearly thirty years in violation of the implementing regulations, the express intent of the Congressional Record, and the fundamental principles of constitutional due process, is an unnecessary and unlawful termination of a prior procedure that previously protected Petitioner's constitutional rights. Had Respondents permitted Immigration Judges to exercise the same authority they exercised on these facts for over sixty years, Petitioner would have been granted bond and released to his family.

121. Petitioner's continued detention without bond, based on the BIA's unconstitutional and legally unsupportable decision in *Yajure-Hurtado*, constitutes actual prejudice. Petitioner has no other forum in which to seek judicial review of the constitutional and legal issues raised by his continued detention.

122. For these reasons, continued detention of Petitioner violates the Due Process Clause of the Fifth Amendment.

**COUNT III: The Laken Riley Act Does Not Apply to Petitioner, and As Applied to Petitioner It Violates the Fifth Amendment**

123. Petitioner incorporates all preceding paragraphs as if fully set forth herein.

124. Petitioner anticipates that Respondents will argue that his detention is independently justified under the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (Jan. 29, 2025), based on the pending charges for Theft by Deception and Forgery

1 in the Salt Lake County criminal matter. For the reasons set forth below, the Laken  
2 Riley Act does not apply to Petitioner's circumstances, and in any event its  
3 application here would violate the Fifth Amendment Due Process Clause.  
4

5 ***A. The Laken Riley Act Confirms That § 1226, Not § 1225, Governs Petitioner's***  
6 ***Detention***

7 125. The Laken Riley Act amended 8 U.S.C. § 1226(c) — not § 1225 — to add a new  
8 mandatory detention category for noncitizens charged with, arrested for, or  
9 convicted of certain theft and other offenses. Pub. L. No. 119-1, § 2 (amending 8  
10 U.S.C. § 1226(c)(1)(E)). The Act's very structure confirms that the statute  
11 Respondents say already mandatorily detains all EWIs — § 1225(b) — is not the  
12 operative framework. If § 1225(b) already required mandatory detention of all  
13 noncitizens who entered without inspection regardless of how long they had been  
14 in the country, there would have been no reason for Congress to amend § 1226(c)  
15 at all. The Laken Riley Act would have been entirely superfluous. Courts have  
16 recognized this structural point. As one court stated, "if Congress had intended for  
17 Section 1225 to govern all noncitizens present in the country who had not been  
18 admitted, then it would not have recently adopted an amendment to Section 1226  
19 that prescribes a subset of noncitizens be exempt from the discretionary bond  
20 framework." See, e.g., *Huerta v. Bondi*, No. 1:25-cv-00941-JLT-HBK (E.D. Cal.  
21 Jan. 9, 2026) (noting that the Laken Riley Act's amendment to § 1226(c) "further  
22 supports" the conclusion that § 1226 — not § 1225 — governs interior EWI  
23 detention, because "the presumption against superfluity is at its strongest because  
24  
25  
26  
27  
28

1 the Court is interpreting two parts of the same statutory scheme, and Congress  
2 even amended the statutory scheme this year”). Accordingly, to the extent the  
3 Laken Riley Act applies to Petitioner at all, it does so through § 1226(c)(1)(E),  
4 further confirming that § 1226 is the operative detention framework — which  
5 means Petitioner is entitled to a bond hearing absent proper application of §  
6 1226(c).  
7  
8  
9  
10

11 ***B. The Laken Riley Act Does Not Apply Because Petitioner’s Charges Do Not***  
12 ***Constitute the “Essential Elements” of a Theft Offense***

13 126. The Laken Riley Act triggers mandatory detention only where the noncitizen “is  
14 charged with, is arrested for, is convicted of, admits having committed, or admits  
15 committing acts which constitute the essential elements of any burglary, theft,  
16 larceny, or shoplifting offense.” 8 U.S.C. § 1226(c)(1)(E)(ii) (emphasis added).  
17 The Act further specifies that the terms “burglary,” “theft,” “larceny,” and  
18 “shoplifting” “have the meaning given such terms in the jurisdiction where the  
19 acts occurred.” Id. § 1226(c)(2). The operative jurisdiction here is Utah.  
20  
21

22 127. Under Utah law, Theft by Deception is codified at Utah Code Ann. § 76-6-405. It  
23 provides that “an actor commits theft by deception if the actor obtains or exercises  
24 control over property of another person: (i) by deception; and (ii) with a purpose to  
25 deprive the other person of property.” Utah Code Ann. § 76-6-405(2)(a). The  
26 critical word is “deception.” Theft by Deception is distinct from simple theft: its  
27  
28

1 essential element is obtaining property through deception — not through taking,  
2 carrying away, or direct misappropriation. The Laken Riley Act enumerates  
3 “theft,” “larceny,” “burglary,” and “shoplifting” — all offenses involving direct  
4 taking or physical misappropriation. A deception-based fraud offense, where the  
5 alleged victim willingly transfers property based on a false representation, is  
6 analytically distinct and does not fall within the core meaning of “theft” or  
7 “larceny” as those terms are commonly understood. The essential element of  
8  
9 Petitioner’s charged offense is deception, not taking. This is a meaningful  
10 distinction: the Laken Riley Act’s definition cross-references the meaning of  
11 “theft” in Utah — and in Utah, “theft by deception” is a distinct statutory offense  
12 under a separate code section from simple “theft” (Utah Code Ann. § 76-6-404).  
13 The government must establish that the charged offense constitutes the “essential  
14 elements” of a covered offense; it cannot simply invoke the word “theft” in the  
15 charge caption.  
16  
17  
18  
19

20 ***C. The Laken Riley Act Violates the Fifth Amendment As Applied to Petitioner***

21 128. Even if the Laken Riley Act were otherwise applicable to Petitioner, its  
22 application on these specific facts violates the Fifth Amendment Due Process  
23 Clause.  
24

25 129. The information and all charges against Petitioner have been dismissed.

26 130. Alta Bank conducted a forensic investigation and concluded that the fraudulent  
27 activity did not originate from Petitioner’s mobile device, personal email, or  
28

1 physical actions. Alta Bank fully exonerated Petitioner and made [REDACTED]  
2 whole for the full amount. Alta Bank did not pursue charges. The CEO of [REDACTED]  
3 [REDACTED] — the entity identified as the financial victim in the criminal case —  
4 submitted a sworn, notarized letter to the prosecutor on March 3, 2026, and  
5 confirmed in a March 19, 2026 email that Petitioner “was cleared of any  
6 wrongdoing.” The victim says Petitioner is innocent. The bank says Petitioner is  
7 innocent. Yet Respondents continue to detain Petitioner without bond based on  
8 these charges.  
9  
10

11 131. Mandatory detention based solely on criminal charges — without any  
12 individualized hearing and without any assessment of whether those charges have  
13 a credible factual basis — constitutes a deprivation of liberty without due process.  
14 The Supreme Court has long recognized that civil detention for any purpose  
15 requires procedural safeguards, including “an individualized detention hearing.”  
16 *Addington v. Texas*, 441 U.S. 418, 425 (1979). Where the predicate criminal  
17 charge itself is factually baseless — where the named victim and the investigating  
18 bank have concluded that the defendant committed no crime — the constitutional  
19 infirmity is at its most acute. Immigration detention premised on a charge that is  
20 demonstrably false is not “reasonably related to a legitimate governmental  
21 purpose.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).  
22  
23  
24  
25

26 132. Federal courts have already recognized that the Laken Riley Act’s mandatory  
27 detention provisions raise serious due process concerns. In September 2025, the  
28 District of Massachusetts granted a writ of habeas corpus to a noncitizen held

1 under the Act, finding that mandatory detention without any individualized  
2 hearing violates the Fifth Amendment. The ACLU of Massachusetts described the  
3 court's holding: "It is unthinkable to imprison someone in the United States  
4 without due process based solely on unproven accusations." That principle applies  
5 with even greater force here, where the accusations have been investigated and  
6 disproved.  
7  
8

9 133. Applying *Mathews v. Eldridge*, 424 U.S. 319 (1976): (1) the private interest —  
10 liberty from detention — is of the highest order; (2) the risk of erroneous  
11 deprivation is extreme and demonstrated: Petitioner is actually innocent of the  
12 predicate charge, as confirmed by the named victim and the investigating bank;  
13 and (3) the government's interest in detaining a person whose criminal predicate  
14 has already been disproved by private investigation is minimal to nonexistent. All  
15 three factors favor Petitioner.  
16  
17

18 134. At minimum, Petitioner is entitled to what courts have called a *Joseph* hearing —  
19 a proceeding at which the government must demonstrate that Petitioner is in fact  
20 subject to mandatory detention, and at which Petitioner may present evidence that  
21 the predicate charge does not reflect conduct he committed. *Matter of Joseph*, 22  
22 I&N Dec. 799 (BIA 1999). He has not been afforded any such hearing. The  
23 government's refusal to conduct any individualized inquiry — in the face of  
24 documented exoneration by the named victim and the bank — renders detention  
25 under the Laken Riley Act unconstitutional as applied to Petitioner.  
26  
27  
28

1 135. For all of these reasons, the Laken Riley Act does not independently justify  
2 Petitioner's detention, and its application here violates the Fifth Amendment.  
3  
4 Petitioner is entitled to a bond hearing regardless of the Act.

5 **IX. PRAYER FOR RELIEF**

6  
7 WHEREFORE, Petitioner respectfully requests that this Court grant the following relief:

- 8 A. Assume jurisdiction over this matter.
- 9  
10 B. Issue an immediate Order to Show Cause, temporarily enjoining the transfer of  
11 Petitioner from the Southern District of California pending adjudication of this  
12 Petition.
- 13  
14 C. Declare as a matter of law that Petitioner may only be detained pursuant to the  
15 provisions of 8 U.S.C. § 1226, and that Respondents may not detain Petitioner  
16 pursuant to 8 U.S.C. § 1225(b).
- 17  
18 D. Grant Petitioner a Writ of Habeas Corpus.
- 19  
20 E. Declare that Petitioner's continued detention without a bond hearing or an  
21 individualized assessment of danger and flight risk violates the Immigration and  
22 Nationality Act as well as the Due Process Clause of the Fifth Amendment.
- 23  
24 F. Declare that the Laken Riley Act, Pub. L. No. 119-1 (2025), does not apply to  
25 Petitioner's circumstances, and that even if applicable, its application here without  
26 any individualized hearing violates the Fifth Amendment Due Process Clause, and  
27 order that Petitioner be provided a Joseph hearing or equivalent individualized  
28 process before any mandatory detention under the Laken Riley Act may be imposed.

1 G. Order Petitioner released if he is not provided a bond hearing within seven (7)  
2 days.

3  
4 H. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act  
5 ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under the  
6 law; and

7  
8 I. Grant any other and further relief that this Court deems just and proper.

9 Respectfully submitted this 1st day of May, 2026.

10  
11 **STOWELL CRAYK PLLC**

12 /s/ Marti L. Jones  
13 MARTI L. JONES  
14 *Attorney for Petitioner (pro hac vice)*  
15 Email: marti@lawscb.com

16  
17 **PARKINSON BENSON POTTER**

18 /s/ Brett Parkinson  
19 BRETT PARKINSON  
20 *Attorney for Petitioner*  
21 Email: brett@pbp.law  
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**EXHIBIT LIST**

A. ICE Transfer Records

B. I-213

C. Notice to Appear

D. Affidavit of Petitioner's Sister, Monica Santibanez Sanchez

E. Utah State Court Order Dismissing Information

F. Sworn, Notarized Character Reference and Exoneration Letter from Barney

Boynton, CEO of Go Pave Utah, dated March 3, 2026.