

1 Law Offices of Gita B. Kapur & Associates
2 Gita B. Kapur, Esq. (CA SBN 223754)
3 617 S. Olive St., Suite 311
4 Los Angeles, CA 90014
5 Tel: (213)327-0455 Fax: (213)327-0707
6 Email: gita.kapur@gitakapurlaw.com

7 Attorneys for Petitioner,
8 Muhammet Fatih Percin

9 UNITED STATES DISTRICT COURT
10 FOR THE CENTRAL DISTRICT OF CALIFORNIA

11 MUHAMMET FATIH PERCIN

Case No.

12
13 Petitioner,

**PETITION FOR WRIT OF
HABEAS CORPUS PURSUANT
TO 28 U.S.C. §2241**

14 v.

PETITIONER'S DHS NO:

A 

15 Ernesto SANTACRUZ JR., Acting
16 Director, Los Angeles Field Office,
17 Immigration and Customs Enforcement,
18 Enforcement and Removal Operations;
19 Todd LYONS, Acting Director,
20 Immigration and Customs Enforcement;
21 Kristi NOEM, Secretary, U.S.
22 Department of Homeland Security; U.S.
23 DEPARTMENT OF HOMELAND
SECURITY; Pamela BONDI, U.S.
Attorney General; David MARIN,
Warden of ICE Desert View Annex,

24
25 Respondents.

INTRODUCTION

1. Petitioner, Muhammet Fatih Percin (DHS No. A [REDACTED]), is a thirty-year-old citizen and national of Turkey who is currently in the physical custody of Respondents at the ICE Desert View Annex in Adelanto, California.

2. Petitioner was born on [REDACTED] in Turkey. *See* Exhibit A (Petitioner's Passport Biographic Page). On or around December 27, 2023, Petitioner entered the United States at or near Tecate, California, without inspection. Petitioner was charged as subject to removal under § 212(a)(6)(A)(i) of the Immigration and Nationality Act (INA), codified at 8 U.S.C. § 1182(a)(6)(A)(i). *See* Exhibit B (Notice to Appear).

3. Petitioner was arrested by the Department of Homeland Security (DHS) on December 27, 2023. On the same day, Petitioner was released on his own recognizance. ICE's Order of Release on Recognizance stated that Petitioner was released on his own recognizance "[i]n accordance with section 236 of the Immigration and Nationality Act," codified at 8 U.S.C. § 1226. *See* Exhibit C (Order of Release on Recognizance (stating release "[i]n accordance with section 236 of the INA," i.e., 8 U.S.C. § 1226)).

4. Thereafter, Petitioner promptly pursued protection in the immigration system. On or around March 20, 2024, Petitioner filed an I-589 Application for

1 Asylum, Withholding of Removal, and Protection under the Convention Against
2 Torture (I-589) with the Immigration Court in Los Angeles, California.

3
4 5. On November 17, 2025, notwithstanding Petitioner's long-standing
5 compliance and steadily improving equities, DHS detained him after he
6 accompanied his wife, Mrs. Karol Stephany Bala Posadas, who is an active U.S.
7 military service member and a lawful permanent resident, to obtain her military
8 ID at the Los Angeles Air Force Base Exchange. Petitioner was first transferred to
9 the ICE in Los Angeles on November 17, 2025. He was then transferred to the ICE
10 Desert View Annex in Adelanto, California, on November 20, 2025. *See* Exhibit
11 E (ICE's Online Detainee Locator System Search Result); *See* Exhibit H
12 (Declaration of Karol S Balaposadas, a copy of Permanent Residence Card, and
13 U.S. Army Card). The fact that Petitioner was taken into custody only when he
14 voluntarily accompanied Mrs. Bala Posadas at a U.S. military base further
15 confirms that he is not a flight risk and that his conduct has remained stable and
16 compliant throughout his time in the community.
17
18
19
20

21 6. On or around December 3, 2025, Petitioner, through his immigration
22 counsel, Ms. Elif Yesildal, filed a Motion for Bond with the Immigration Court in
23 Adelanto, California. The Motion was denied on December 9, 2025, as the
24 Immigration Court found that it lacked jurisdiction over the request for custody
25 redetermination pursuant to *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA
26
27
28

1 2025). *See* Exhibit F (Order of Immigration Judge dated December 9, 2025). In
2 addition, Ms. Yesildal also filed a parole request on behalf of the Petitioner with
3 the Enforcement and Removal Operation (ERO). However, the Petitioner's parole
4 request was also denied on December 8, 2025. *See* Exhibit G (Parole Request
5 Denial Email dated December 8, 2025).
6

7
8 7. Petitioner's master hearing of his I-589 Application is scheduled for
9 January 6, 2026, 1:00 p.m., at Adelanto, California. *See* Exhibit D (Automated
10 Case System; Immigration Court scheduled hearing date January 6, 2026).
11

12 8. DHS re-detained Petitioner pursuant to a new 2025 DHS policy and the
13 Board of Immigration Appeals' decision in *Matter of Yajure Hurtado*, 29 I. & N.
14 Dec. 216 (BIA 2025), under which noncitizens charged under 8 U.S.C. §
15 1182(a)(6)(A)(i) are treated as "applicants for admission" subject to mandatory
16 detention under 8 U.S.C. § 1225(b)(2)(A) and categorically denied individualized
17 bond hearings. Petitioner's current detention rests entirely on that novel statutory
18 reinterpretation, not on any material change in his own conduct. From the outset
19 of his case, ICE and DHS treated Petitioner as detained under 8 U.S.C. § 1226,
20 released him on his own recognizance, and supervised him for nearly two years
21 without incident; only now, after he has submitted his I-589 Application, has DHS
22 sought to reclassify him into the § 1225(b)(2)(A) framework and strip him of any
23 opportunity to seek bond.
24
25
26
27

1 9. This new interpretation is contrary to the plain language and structure
2 of the INA and to decades of agency practice applying § 1226(a)—not §
3 1225(b)(2)(A)—to noncitizens like Petitioner who long ago entered the United
4 States, live in the interior, and are charged as “present in the United States without
5 admission or parole.” This policy or practice is inconsistent with Congress' intent
6 for asylees and asylum-based adjustment applicants, as asylees must accrue at least
7 one year of physical presence in the United States after the grant of asylum to be
8 eligible for and obtain adjustment of status under INA § 209(b), and asylum-based
9 immigrant visas are not available through consular processing abroad. By abruptly
10 re-detaining Petitioner without any individualized finding of danger or flight risk,
11 and by categorically denying him access to a bond hearing, Respondents are
12 detaining him arbitrarily and ultra vires, in violation of the INA and the Due
13 Process Clause.

14 10. Accordingly, Petitioner seeks a writ of habeas corpus ordering his
15 immediate release from ICE custody or, at a minimum, requiring Respondents to
16 provide him with a prompt, constitutionally adequate individualized custody
17 hearing before a neutral decisionmaker under 8 U.S.C. § 1226(a), at which the
18 government bears the burden of justifying any further detention by clear and
19 convincing evidence.
20
21
22
23
24
25
26
27
28

JURISDICTION

11. Petitioner is in the physical custody of Respondents. Petitioner is presently detained at the ICE Desert View Annex in Adelanto, California. *See* Exhibit E.

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

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

VENUE

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

15. 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 Eastern District of California.

///

///

REQUIREMENTS OF 28 U.S.C. § 2243

16. 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.*

17. 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

18. Petitioner, Muhammet Fatih Percin, is a citizen of Turkey who has been in immigration detention since November 17, 2025. After arresting Petitioner in Los Angeles, California, ICE did not set bond, and Petitioner was denied to obtain a 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). *See* Exhibit F.

1 19. Respondent, Ernesto Santacruz Jr., is the Acting Director of the Los
2 Angeles Field Office of ICE ERO. As such, Ernesto Santacruz Jr. is the Petitioner's
3 immediate custodian and is responsible for Petitioner's detention and removal. He
4 is named in his official capacity.
5

6 20. Respondent, Todd Lyons, is the Acting Director of ICE, a federal law
7 enforcement agency within the DHS. ICE's responsibilities include operating the
8 immigration detention system. In his capacity as ICE Acting Director, Respondent,
9 Todd Lyons, exercises control over and is a custodian of persons held at ICE
10 facilities nationwide. He is Petitioner's immediate custodian and is responsible for
11 Petitioner's detention. At all times relevant to this petition, Respondent, Todd
12 Lyons, was acting within the scope and course of his employment with ICE. He is
13 sued in his official capacity.
14
15
16

17 21. Respondent, Kristi Noem, is the Secretary of the Department of
18 Homeland Security. She is responsible for the implementation and enforcement of
19 the INA, and oversees ICE, which is responsible for Petitioner's detention. Ms.
20 Noem has ultimate custodial authority over Petitioner and is sued in her official
21 capacity.
22

23 22. Respondent Department of Homeland Security (DHS) is the federal
24 agency responsible for implementing and enforcing the INA, including the
25 detention and removal of noncitizens.
26

24. Respondent, Fereti Semaia, is the Warden of the ICE Desert View Annex, Adelanto, California, where Petitioner is retained. He has immediate physical custody of Petitioner. He is sued in his official capacity.

LEGAL FRAMEWORK

25. The applicable statutory, regulatory, and constitutional framework confirms that Petitioner is detained under 8 U.S.C. § 1226(a), not § 1225(b)(2)(A), and that Respondents' new policy and *Matter of Yajure Hurtado* cannot lawfully strip him of an individualized custody determination.

A. Statutory Detention Framework

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

27. 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

1 arrested, charged with, or convicted of certain crimes are subject to mandatory
2 detention, *see* 8 U.S.C. § 1226(c).

3
4 28. Second, the INA provides for mandatory detention of noncitizens
5 subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent
6 arrivals seeking admission who fall within the scope of § 1225(b)(2).

7
8 29. Lastly, the INA also provides for detention of noncitizens who have
9 been ordered removed, including individuals in withholding-only proceedings, *see*
10 8 U.S.C. § 1231(a)–(b).

11 30. This case concerns the detention provisions at §1226(a).

12
13 31. The detention provisions at §1226(a) and §1225(b)(2) were enacted as
14 part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA)
15 of 1996, Pub. L. No. 104–208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582
16 to 3009–583, 3009–585. Section 1226(a) was most recently amended earlier this
17 year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

18
19 32. Following the enactment of the IIRIRA, the EOIR drafted new
20 regulations explaining that, in general, people who entered the country without
21 inspection were not considered detained under §1225 and that they were instead
22 detained under §1226(a). *See* Inspection and Expedited Removal of Aliens;
23 Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum
24 Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

1 33. Thus, in the decades that followed, most people who entered without
2 inspection and were placed in standard removal proceedings received bond
3 hearings, unless their criminal history rendered them ineligible pursuant to 8
4 U.S.C. § 1226(c). That practice was consistent with many more decades of prior
5 practice, in which noncitizens who were not deemed “arriving” were entitled to a
6 custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a)
7 (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that §1226(a)
8 simply “restates” the detention authority previously found at §1252(a)).
9

10
11 34. On July 8, 2025, ICE, “in coordination with” DOJ, announced a new
12 policy that rejected well-established understanding of the statutory framework and
13 reversed decades of practice.
14

15 35. The new policy, entitled “Interim Guidance Regarding Detention
16 Authority for Applicants for Admission,”¹ claims that all persons who entered the
17 United States without inspection shall now be subject to mandatory detention
18 provision under §1225(b)(2)(A). The policy applies regardless of when a person is
19 apprehended, and affects those who have resided in the United States for months,
20 years, and even decades.
21
22
23
24
25

26
27 ¹ Available at <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applicants-for-admission>.

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

6 37. Since Respondents adopted their new policies, dozens of federal courts
7 have rejected their new interpretation of the INA's detention authorities. Courts
8 have likewise rejected *Matter of Yajure Hurtado*, which adopts the same reading
9 of the statute as ICE.
10

11 38. Even before ICE or the BIA introduced these nationwide policies, IJs
12 in the Tacoma, Washington immigration court stopped providing bond hearings
13 for persons who entered the United States without inspection and who have since
14 resided here. There, the U.S. District Court in the Western District of Washington
15 found that such a reading of the INA is likely unlawful and that §1226(a), not
16 §1225(b), applies to noncitizens who are not apprehended upon arrival to the
17 United States. *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash.
18 2025).
19

20 39. Subsequently, court after court has adopted the same reading of the
21 INA's detention authorities and rejected ICE and EOIR's new interpretation. *See*,
22 *e.g.*, *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July
23 7, 2025); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp. 3d ----,
24
25
26
27

1 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v. Figueroa*, No. CV 25-
2 02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and*
3 *recommendation adopted*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL
4 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937
5 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No.
6 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025);
7 *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL
8 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025
9 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH),
10 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-
11 CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez*
12 *v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025);
13 *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug.
14 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d ----,
15 2025 WL 2466670 (D. Minn. Aug. 27, 2025) *Lopez-Campos v. Raycraft*, No. 2:25-
16 cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez*
17 *Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept.
18 3, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025
19 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-
20 12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-
21

1 CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *see also, e.g., Palma*
2 *Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at *2 (D. Neb. Sept. 3, 2025)
3 (noting that “[t]he Court tends to agree” that § 1226(a) and not § 1225(b)(2)
4 authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL
5 2402271 at *3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-
6 03158-JFB-RCC, 2025 WL 2374224 at *2 (D. Neb. Aug. 14, 2025) (same).

7
8
9 40. Courts have uniformly rejected DHS’s and EOIR’s new interpretation
10 because it defies the INA. As the *Rodriguez Vazquez* court and others have
11 explained, the plain text of the statutory provisions demonstrates that §1226(a), not
12 § 1225(b), applies to people like Petitioner.

13
14 41. Section 1226(a) applies by default to all persons “pending a decision
15 on whether the [noncitizen] is to be removed from the United States.” These
16 removal hearings are held under § 1229a, to “decid[e] the inadmissibility or
17 deportability of a[] [noncitizen].”

18
19 42. The text of §1226 also explicitly applies to people charged as being
20 inadmissible, including those who entered without inspection. *See 8 U.S.C. §*
21 1226(c)(1)(E). Subparagraph (E)’s reference to such people makes clear that, by
22 default, such people are afforded a bond hearing under subsection (a). As the
23 *Rodriguez Vazquez* court explained, “[w]hen Congress creates ‘specific
24 exceptions’ to a statute’s applicability, it ‘proves’ that absent those exceptions, the
25
26
27
28

1 statute generally applies.” *Rodriguez Vazquez*, 779 F. Supp. 3d at 1257 (citing
2 *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400
3 (2010)); *see also Gomes*, 2025 WL 1869299, at *7.

4
5 43. Section 1226, therefore, leaves no doubt that it applies to people who
6 face charges of being inadmissible to the United States, including those who are
7 present without admission or parole.

8
9 44. By contrast, §1225(b) applies to people recently arriving at U.S. ports
10 of entry or who recently entered the United States. The statute’s entire framework
11 is premised on inspections at the border of people who are “seeking admission” to
12 the United States. 8 U.S.C. §1225(b)(2)(A). Indeed, the Supreme Court has
13 explained that this mandatory detention scheme applies “at the Nation’s borders
14 and ports of entry, where the Government must determine whether a[] [noncitizen]
15 seeking to enter the country is admissible.” *Jennings v. Rodriguez*, 583 U.S. 281,
16 287 (2018).

17
18
19 45. Accordingly, the mandatory detention provision of §1225(b)(2)(A)
20 does not apply to individuals like Petitioner. Instead, Petitioner’s posture squarely
21 fits § 1226(a). He was charged in an NTA as “present in the United States without
22 being admitted or paroled,” not as an “arriving alien,” and DHS initially released
23 him “in accordance with section 236 of the INA,” i.e., § 1226. The government
24 supervised him under that framework for nearly two years, during which he fully
25
26
27
28

1 complied with attending his master hearings and USCIS biometric appointment for
2 his pending I-589 Application. Nothing in the statute authorizes DHS, years after
3 an interior release, to retroactively transform a § 1226(a) case into a §
4 1225(b)(2)(A) mandatory-detention case based solely on a new internal policy.
5 Petitioner is not properly detained under § 1225(b)(2), which does not apply here;
6 if he is detained at all, it is under § 1226(a), and he remains entitled to an
7 individualized custody hearing with the possibility of bond or conditional release.
8
9

10 **B. Asylum Framework And Required Physical Presence**

11 46. Congress created asylum as a humanitarian protection for
12 individuals who have been persecuted or who have a well-founded fear of future
13 persecution on account of race, religion, nationality, membership in a particular
14 social group, or political opinion, and who are present in the United States. *See*
15 INA § 208. The asylum statute and implementing provisions reflect Congress'
16 intent that approved asylees remain in the United States to pursue adjustment of
17 status: asylees must accrue at least one year of physical presence in the United
18 States after the grant of asylum to be eligible for adjustment under INA § 209(b),
19 with broad waivers available for certain grounds of inadmissibility under INA §
20 209(c) for humanitarian purposes, family unity, or the public interest, and may
21 adjust only by filing Form I-485 from within the United States when eligible.
22
23
24
25
26
27
28

1 There is no consular process for asylum-based adjustment; it is an “adjustment-
2 only” pathway that presupposes continued physical presence in the United States.

3
4 47. Petitioner’s application for asylum remains pending before the
5 immigration court, placing him in the exact position Congress contemplated for
6 individuals seeking this humanitarian protection: he is present in the United States
7 pursuing asylum relief, and, if granted, will need to remain here to accrue the
8 required physical presence and eventually seek adjustment of status. Arbitrary
9 detention and potential removal during the pendency of his asylum application
10 frustrate Congress’s design for the asylum process and would effectively nullify
11 the protection asylum is meant to provide by preventing him from obtaining a grant
12 of asylum while physically present and pursuing the intended path to permanent
13 residency.
14
15

16
17 **C. Due Process and the Right to an Individualized Custody Hearing**

18 48. The Fifth Amendment’s Due Process Clause protects noncitizens from
19 arbitrary civil detention. The Supreme Court has recognized that civil immigration
20 detention is constitutionally permissible only when it bears a reasonable relation
21 to its purposes, ensuring appearance and protecting the community, and remains
22 subject to appropriate procedural safeguards. In the pre-removal context,
23 numerous decisions hold that due process requires an individualized determination
24 of flight risk and danger, with the government bearing the burden, especially where
25
26
27
28

1 detention is prolonged or imposed after a period of successful community
2 supervision.

3
4 49. Under the balancing test set forth in *Mathews v. Eldridge*, 424 U.S.
5 319 (1976), Petitioner's liberty interest is substantial: he faces physical
6 confinement and the risk of removal that would terminate his ability to pursue
7 asylum adjustment. The risk of erroneous deprivation is high where DHS has
8 categorically foreclosed any bond hearing based solely on a legal re-
9 characterization of his status, despite nearly two years of perfect compliance and a
10 pending asylum case.
11
12

13 50. Petitioner has had no arrests since his release on supervision. The
14 additional procedural safeguard Petitioner seeks – a prompt, individualized
15 custody hearing under § 1226(a) with the government bearing the burden by clear
16 and convincing evidence – is modest and well within the traditional tools courts
17 and immigration judges have used in immigration detention cases. Under *Mathews*,
18 the balance strongly favors requiring such a hearing.
19
20
21

22 **D. Ultra Vires Agency Action and Arbitrary Reinterpretation**

23 51. Agencies must act within the bounds Congress set and may not,
24 through bare policy memoranda or adjudicatory fiat, reverse decades of consistent
25 statutory interpretation in a manner that strips individuals of established procedural
26
27

1 protections without reasoned explanation. Here, the new 2025 DHS policy and
2 *Matter of Yajure Hurtado* depart from the statutory text, ignore the settled
3 understanding that non-arriving EWI respondents in § 240 proceedings are
4 detained under § 1226(a).

5
6 52. By treating Petitioner as a perpetual "applicant for admission" subject
7 mandatory detention, despite his history of interior residence and prior release under
8 § 1226, Respondents have exceeded their statutory authority and violated basic
9 administrative law and constitutional constraints. Because Petitioner is, as a matter
10 of law, a § 1226(a) detainee with strong humanitarian equities and has no criminal
11 convictions, a detention without any opportunity for an individualized custody
12 determination is unlawful.
13
14

15 FACTS

16
17 53. Petitioner was born on  in Turkey. *See* Exhibit A.

18 54. On or around December 27, 2023, Petitioner entered the United States
19 at or near Tecate, California, without inspection. Petitioner was charged as subject
20 to removal under INA § 212(a)(6)(A)(i), codified at 8 U.S.C. § 1182(a)(6)(A)(i).
21 *See* Exhibit B (Notice to Appear).
22

23 55. The Notice to Appear did not classify Petitioner as an "arriving alien."
24 Instead, it charged him as a noncitizen "present in the United States who has not
25 been admitted or paroled." *See Id.*
26

1 56. On December 27, 2023, Petitioner was released on his own
2 recognizance “[i]n accordance with section 236 of the Immigration and Nationality
3 Act,” codified at 8 U.S.C. § 1226, and thereafter complied with all conditions of
4 release. *See* Exhibit C (Order of Release on Recognizance).
5

6 57. On or around March 20, 2024, Petitioner filed an I-589 Application
7 with the Immigration Court in Los Angeles, California. His Master Hearing on the
8 I-589 is scheduled for January 6, 2026, at 1:00 p.m. at Adelanto, California. *See*
9 Exhibit D (Automated Case System Information).
10

11 58. During his one year and eleventh months of residence in the United
12 States prior to re-detention, Petitioner lived with Mrs. Bala Posadas, worked, spent
13 time with family, and developed strong ties to his community, while appearing for
14 all immigration court hearings and USCIS appointments. *See* Exhibit H
15 (Declaration of Karol S. Balaposadas; Permanent Resident Card; U.S. Army Card);
16 Exhibit I (Copy of Petitioner’s Marriage Certificate); Exhibit J (Proof of Shared
17 Residency with Ms. Karol S. Balaposadas); Exhibit K (Compilation of Signed
18 Statements of Petitioner’s Friends, Colleagues, and Clients with Their
19 Identification Documents); Exhibit L (Employment Verification Letter; Proof of
20 Income; Petitioner’s Valid Employment Authorization Card); Exhibit M (USCIS
21 Biometric Appointment Notice Dated June 4, 2024).
22
23
24
25
26
27
28

1 59. In particular, Petitioner's employer confirms he has been a hard worker
2 and outstanding employee with a good work ethic since November 2024. His
3 employer further attests that he constantly receives positive feedback from clients
4 regarding the Petitioner's professionalism, dedication, and coaching abilities. *See*
5 Exhibit L. Declarations from the Petitioner's friends, colleagues, and clients,
6 accompanied by proof of their lawful status in the United States, further attest to
7 his good moral character, strong work ethic, supportive nature, effectiveness as a
8 coach, and kind treatment of others. *See* Exhibits K.

11 60. Petitioner has complied with all of his obligations since he was released
12 on his recognizance on December 27, 2023. He appeared at all scheduled
13 immigration-court hearings and attended his USCIS Biometric Appointment. *See*
14 Exhibit M (USCIS Biometric Appointment Notice dated June 4, 2024). Between
15 his initial release in December 2023 and his detention on November 17, 2025,
16 Petitioner did not miss a hearing or a USCIS appointment, did not abscond, and
17 did not incur any criminal convictions. During this period, he worked and assisted
18 Mrs. Bala Posadas with household responsibilities.

22 61. On July 8, 2025, DHS issued interim guidance instructing ICE officers
23 nationwide to treat all noncitizens arrested in the United States and charged under
24 8 U.S.C. § 1182(a)(6)(A)(i) as “applicants for admission” subject to mandatory
25 detention under 8 U.S.C. § 1225(b)(2)(A). That policy, not any change in
26

1 Petitioner's conduct, is what precipitated his re-detention. On November 17, 2025,
2 Petitioner accompanied Mrs. Bala Posadas to obtain her military ID at the Los
3 Angeles Air Force Base Exchange. Instead of being allowed to leave, officers at
4 the Los Angeles Air Force Base Exchange started a background check on
5 Petitioner and later arrested Petitioner on the spot. Without prior notice, the
6 authority transferred Petitioner first to the ICE in Los Angeles, and then to the ICE
7 Desert View Annex, where he remains detained. *See* Exhibit E (ICE's Online
8 Detainee Locator System Search Result).

11 62. Thus, the only "change" between December 2023 and November 2025
12 is DHS's July 8, 2025 policy reinterpretation of its detention authority. Petitioner's
13 own conduct and equities—steady immigration court and USCIS compliance,
14 strong family support, and pending asylum—have only improved, underscoring
15 that his present detention is arbitrary and policy-driven, not fact-driven.
16

18 63. Petitioner's wife, Mrs. Bala Posadas, is a lawful permanent resident,
19 and 

21 who regards Petitioner as her primary support system and relies on his presence in
22 their home for both practical assistance with household responsibilities, including
23 caring for their dogs and managing daily tasks, and emotional companionship.
24 Petitioner's detention has disrupted this family unit. It has caused Mrs. Bala
25 Posadas significant emotional, physical, and financial distress, including immense
26
27

1 stress, anxiety, sleeplessness, difficulty concentrating, headaches, constant anger,
2 tense back and shoulders, burnout, a weakened immune system, and a debilitating
3 impact on [REDACTED] See
4 Exhibit H (Declaration of Karol S. Bala Posadas).
5

6 64. Petitioner has no criminal convictions and has maintained a spotless
7 record and complied with every requirement imposed by ICE, USCIS, and the
8 immigration court. There have been no material changes in his conduct or
9 immigration posture that would justify re-detention after nearly two years of
10 peaceful community residence.
11
12

13 65. Petitioner is now detained because DHS has newly concluded that,
14 notwithstanding his physical presence in and residence within the interior of the
15 United States, he should be deemed an “applicant for admission” subject to
16 mandatory detention under 8 U.S.C. § 1225(b)(2)(A), and therefore ineligible for
17 a bond hearing.
18

19 66. As set out in the Legal Framework and Claims sections below,
20 Petitioner’s detention under § 1225(b)(2)(A) is contrary to the plain language of
21 the INA and decades of agency practice; as a noncitizen charged as present in the
22 United States without admission or parole, he is properly detained—if at all—
23 under 8 U.S.C. § 1226(a), which authorizes release on bond or conditional parole
24 following an individualized custody determination. Respondents’ continued
25
26
27
28

1 detention of Petitioner without such a hearing is arbitrary, unlawful, and subject to
2 habeas corpus review.

3
4 **CLAIMS FOR RELIEF**

5 **COUNT I**

6 **Violation of the INA (Unlawful Detention Under § 1225(b)(2)(A))**

7
8 67. Petitioner incorporates by reference the allegations of fact set forth in
9 the preceding paragraphs.

10 68. From the outset of Petitioner's case, both ICE and DHS proceeded
11 under section 1226. Specifically, ICE's Order of Release on Recognizance stated
12 that Petitioner was being released on his own recognizance "[i]n accordance with
13 section 236 of the Immigration and Nationality Act," codified at section 1226, and
14 Petitioner was thereafter supervised in the community under that provision for
15 nearly two years.
16

17
18 69. The Notice to Appear issued by DHS did not classify Petitioner as an
19 "arriving alien." Instead, DHS charged him as a noncitizen "present in the United
20 States who has not been admitted or paroled." That charging decision squarely
21 places him within the ambit of § 1226(a), not § 1225(b)(2)(A). See e.g., *Ortiz*
22 *Donis v. Chestnut*, No. 1:25-cv-01228 JLT SAB, slip op. at 10-15 (E.D. Cal. Oct.
23 9, 2025); *Pizarro Reyes v. Raycraft*, No. 25-cv-12546, 2025 WL 2609425, at *8
24 (emphasizing ICE's selection of "present" rather than "arriving" on the NTA as
25
26
27
28

1 evidence that § 1226 applied); see also *Hyppolite v. Noem*, No. 25-4304, 2025 WL
2 2829511, *8 (E.D.N.Y. Oct. 6, 2025) (Respondent’s initial classification of
3 petitioner “certainly is relevant to the Court’s assessment of the credibility and
4 good faith of ‘Respondents’ new position as to the basis for [Hyppolite’s]
5 detention, which was adopted post hoc and raised for the first time in this
6 litigation.’”) (citation omitted); *Perez v. Berg*, No. 25-cv-494, 2025 WL 2531566,
7 at *2 (D. Neb. July 24, 2025) (“The Court notes that the government itself charged
8 Petitioner as an alien present in the United States who has not been admitted or
9 paroled rather than an arriving alien.”) (quotations omitted).

10
11
12
13 70. As multiple courts have recognized, “[w]hereas [section] 1225 governs
14 removal proceedings for ‘arriving aliens,’ [section] 1226(a) serves as a catchall.”
15 *Pizarro Reyes v. Raycraft*, No. 25-cv-12546, 2025 WL 2609425, at *5 (E.D. Mich.
16 Sept. 9, 2025). As the Supreme Court stated in *Jennings*, section 1226 “creates a
17 default rule” that “applies to aliens already present in the United States.” *Jennings*,
18 583 U.S. at 303. The inclusion of a “catchall” provision in section 1226,
19 particularly following the more specific provision in section 1225, is “likely no
20 coincidence, but rather a way for Congress to capture noncitizens who fall outside
21 of the specified categories.” *Pizarro Reyes*, 2025 WL 2609425, at *5.

22
23
24
25 71. Petitioner’s circumstances align with § 1226(a), not § 1225(b)(2)(A):
26 he is charged as “present” rather than “arriving,” placed in standard § 240 removal
27

1 proceedings, initially released under § 1226, and supervised in the interior for
2 nearly two years before re-detention. Under the statutory scheme and decades of
3 agency practice, detention authority for such individuals lies in § 1226(a), which
4 authorizes release on bond or conditional parole following an individualized
5 custody determination; it does not lie in § 1225(b)(2)(A)'s mandatory-detention
6 regime for certain noncitizens being inspected as “applicants for admission” at or
7 near the border.
8
9

10 72. It is therefore unlawful to deny him any bond hearing based on an
11 overbroad reading of §1225(b)(2)(A). The plain text of the INA, as recently
12 interpreted in *Maldonado Bautista v. Santacruz Jr.*, et al., Case No. 5:25-cv-01873-
13 SSS-BFM, (C.D. Cal. Dec. 18, 2025)(final judgment for nationwide Bond Eligible
14 Class, declaring detention governed by § 1226(a), vacating DHS’s July 8, 2025
15 “applicants for admission” no-bond policy, and confirming class-wide bond
16 eligibility), dictates that a noncitizen arrested in the interior after years of residence
17 and long-standing treatment as a § 1226(a) respondent is not subject to mandatory
18 detention under § 1225(b)(2).
19
20
21

22 73. By re-detaining Petitioner under § 1225(b)(2)(A) and categorically
23 denying him access to an individualized custody determination, Respondents are
24 acting contrary to the plain language and structure of the INA and to decades of
25 settled practice applying § 1226(a) to noncitizens in Petitioner’s posture. The
26
27
28

1 application of § 1225(b)(2)(A) to Petitioner unlawfully mandates his continued
2 detention and violates the INA. Petitioner is statutorily entitled to custody under §
3 1226(a), including a bond hearing before a neutral decisionmaker, and his
4 continued mandatory detention under § 1225(b)(2)(A) is ultra vires and must be
5 enjoined.
6

7
8 74. Moreover, nothing about Petitioner's record or circumstances justifies
9 treating him as a danger or flight risk: he has no criminal convictions, has complied
10 with USCIS appointment and court obligation, and has deep, documented family
11 and community ties. *See* Exhibits H – M.
12

13 **COUNT II**

14 **Violation of Due Process**

15 75. Petitioner repeats, re-alleges, and incorporates by reference each and
16 every allegation in the preceding paragraphs as if fully set forth herein.
17

18 76. The Fifth Amendment provides that the government may not deprive a
19 person of life, liberty, or property without due process of law. U.S. Const. amend.
20 V. "Freedom from imprisonment—from government custody, detention, or other
21 forms of physical restraint—lies at the heart of the liberty that the Clause protects."
22 *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).
23

24 77. Petitioner has a fundamental interest in liberty and being free from
25 official restraint. He was released on his own recognizance in December 2023 and
26

1 lived in the community for approximately one year and eleventh months, during
2 which he resided with his family, appeared at all immigration court hearings, and
3 pursued an asylum relief.
4

5 78. On November 17, 2025, immigration authorities took Petitioner back
6 into custody after he accompanied Mrs. Bala Posadas to obtain her ID at a military
7 base, without providing him any advance notice, any pre-deprivation hearing, or
8 any individualized assessment of changed circumstances that might justify
9 renewed detention.
10

11 79. While *Matter of Sugay*, 17 I. & N. Dec. 637 (BIA 1981), recognizes
12 that DHS may revoke bond upon a “considerable change in circumstances,” no
13 such material change exists here. Unlike the respondent in *Sugay*, Petitioner did
14 not commit a new crime, abscond, or violate any condition of release: he continued
15 to comply with all of his immigration obligation, resided at his verified address
16 from December 2023, through his re-detention on November 17, 2025. The real
17 “change” is DHS’s July 8, 2025, policy reinterpretation of its detention authority
18 under § 1225(b)(2)(A), which cannot, consistent with due process, substitute for
19 an individualized determination of danger or flight risk.
20
21
22

23 80. Federal courts have repeatedly emphasized that “the government’s
24 discretion to incarcerate non-citizens is always constrained by the requirements of
25 due process.” *Ortega v. Bonner*, 415 F.Supp.3d 963(N.D. Cal. 2019) (quotation
26
27

1 omitted); *see also Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017)
2 (holding that due process in immigration custody requires an individualized
3 determination and allocation of the burden to the government).
4

5 81. Petitioner has not been afforded any process whatsoever in connection
6 with his re-detention. There has been no hearing before a neutral decisionmaker,
7 no opportunity to contest the basis for renewed custody, and no finding – let alone
8 proof by clear and convincing evidence – that he poses a danger or flight risk.
9 There has been no material change in his circumstances: he has not committed any
10 crimes or violated any condition of release. He continued to comply with his
11 Immigration Court hearing and to pursue his pending I-589, which keeps him
12 actively engaged in seeking lawful relief from removal.
13
14

15 82. Under the balancing test set forth in *Mathews v. Eldridge*, 424 U.S. 319
16 (1976), Petitioner is entitled to an individualized custody hearing. Petitioner's
17 interest in freedom from physical restraint is "substantial" and "at the heart of the
18 liberty that the Clause protects." His detention separates him from his wife – an
19 active-duty military member – and jeopardizes his pending asylum claim. The risk
20 of erroneous deprivation of liberty is extreme where the government categorically
21 denies a hearing based on a novel statutory interpretation that has already been
22 declared unlawful. On December 18, 2025, in *Maldonado Bautista v. Santacruz*
23 *Jr., et. al*, Case No. 5:25-cv-01873-SSS-BFM, (C.D. Cal. Dec. 18, 2025), the
24
25
26
27
28

1 Central District of California issued a final judgment for a nationwide "Bond
2 Eligible Class," declaring that noncitizens in Petitioner's posture are governed by
3 § 1226(a) and must be afforded bond eligibility. Providing a prompt,
4 individualized hearing imposes a minimal burden on the government. The
5 government's interest in ensuring appearance is already satisfied by Petitioner's
6 nearly two-years track record of perfect compliance.
7

8
9 83. Re-detaining a noncitizen who has successfully resided in the interior
10 for years, without a hearing and based solely on a vacated agency policy, is the
11 definition of arbitrary and capricious government action.
12

13 84. Respondents' continued detention of Petitioner without a bond hearing
14 before a neutral decisionmaker – where the government bears the burden of proof
15 by clear and convincing evidence – violates the Fifth Amendment.
16

17 **PRAYER FOR RELIEF**

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

- 19 a. Assume jurisdiction over this matter;
20
21 b. Order that Petitioner shall not be transferred outside the Central District
22 of California while this habeas petition is pending;
23
24 c. Issue an Order to Show Cause ordering Respondents to show cause why
25 this Petition should not be granted within three days;
26

- 1 d. Issue a Writ of Habeas Corpus requiring that Respondents release
2 Petitioner from custody immediately pursuant to the final judgment in
3 *Maldonado Bautista v. Santacruz Jr.*, Case No. 5:25-cv-01873-SSS-
4 BFM (C.D. Cal. Dec. 18, 2025);
5
6 e. In the alternative, order Respondents to provide Petitioner with an
7 individualized bond hearing before an immigration judge within seven
8 (7) days, at which the government bears the burden of proving by clear
9 and convincing evidence that Petitioner's continued detention is
10 justified;
11
12 f. Declare that Petitioner is not an "applicant for admission" subject to
13 mandatory detention under 8 U.S.C. § 1225(b);
14
15 g. If Respondents seek to re-detain Petitioner, order that Petitioner be
16 afforded a pre-deprivation bond hearing before a neutral arbiter
17 pursuant to 8 U.S.C. §1226(a);
18
19 h. Award Petitioner attorney's fees and costs under the Equal Access to
20 Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other
21 basis justified under law; and
22
23 i. Grant any other and further relief that this Court deems just and proper.
24

25 DATED: December 29, 2025

Respectfully submitted,
/s/Gita B. Kapur
Gita B. Kapur
Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 29, 2025, I served a copy of this
Petition for Writ of Habeas Corpus by email to the following individual:

David M. Harris
Chief of the Civil Division
U.S. Attorney's Office
300 N. Los Angeles St., 7th Floor
Los Angeles, CA 90012
Email: David.M.Harris@usdoj.gov

/s/ Gita B. Kapur
Gita B. Kapur
Attorney for Petitioner