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3 **UNITED STATES DISTRICT COURT**
4 **FOR THE DISTRICT OF WESTERN DISTRICT OF TEXAS**
5 **EL PASO DIVISION**

6 **OLGER HUMBERTO CALLE**
7 **QUITUIZACA**

8 **Petitioner,**

9 **v.**

10 **ANGEL GARITE, in his official**
11 **capacity as Assistant Field Office**
12 **Director of Enforcement and Removal**
13 **Operations, El Paso Field Office,**
14 **U.S. Immigration and Customs**
15 **Enforcement;**

16 **MARY DE ANDA-YBARRA, in her**
17 **official capacity as Field Office**
18 **Director of Enforcement and Removal**
19 **Operations, El Paso Field Office, U.S.**
20 **Immigration and Customs**
21 **Enforcement;**

22 **TODD LYONS, in his official capacity**
23 **as Acting Director and Senior Official**
24 **Performing the Duties of the Director**
of U.S. Immigration and Customs
Enforcement;

KRISTI NOEM, in her official
capacity as Secretary of the U.S.
Department of Homeland Security;

Case No. 3:26-cv-179

PETITION FOR WRIT OF
HABEAS CORPUS PURSUANT
TO 28 U.S.C. § 2241 OR ORDER
TO SHOW CAUSE WITHIN 3
DAYS

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2 PAMELA BONDI, in her official
3 capacity as United States Attorney
4 General;
5 And

6 Warden, in his official capacity, of the
7 ERO El Paso Camp East Montana
8 Detention Facility.

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24 Respondents.

**VERIFIED PETITION FOR WRIT OF HABEAS CORPUS PURSUANT
TO 28 U.S.C. § 2241 OR ORDER TO SHOW CAUSE WITHIN 3 DAYS**

INTRODUCTION

1. Petitioner, Olger Humberto Calle Quituizaca, is in the physical custody of Respondents at the Camp East Montana. He now faces unlawful detention because the Department of Homeland Security (DHS) and the Executive Office of Immigration Review (EOIR) have concluded Petitioner is subject to mandatory detention.

2. On July 10, 2019, the Petitioner first entered the United States without inspection.

3. On July 11, 2019, the Petitioner was served and charged by Immigration and Customs Enforcement ("ICE") for being an Alien Present Without Admission or Parole (PWAs) under INA 212(a)(6)(A)(i) (a.k.a. 8 U.S.C. § 1182(a)(6)(A)(i)).

4. Petitioner was released, placed into removal proceedings, and subsequently filed an I-589 application for asylum.

5. On June 10, 2022, EOIR dismissed Petitioner's removal proceedings without prejudice following a motion from DHS.

6. On December 13, 2023, Petitioner filed an affirmative I-589 application for asylum with United States Citizenship and Immigration Services (USCIS).

1 7. On December 09, 2025, USCIS scheduled Petitioner for an
2 interview on his asylum application on January 29, 2026 at 1:15 PM in St.
3 Paul, Minnesota.

4 8. On January 9, 2025, Petitioner was arrested and taken into ICE
5 custody while he was at a gas station in Minnesota.

6 9. Petitioner was transferred to El Paso shortly afterwards

7 10. Based on this allegation in Petitioner's removal proceeding, DHS
8 denied Petitioner release from immigration custody, consistent with a new
9 DHS policy formalized by the BIA decision *Matter of Yajure Hurtado*, under
10 which all ICE employees are to consider anyone inadmissible under 8 U.S.C.
11 § 1182(a)(6)(A)(i)—i.e., those who entered the United States without
12 inspection—to be an “applicant for admission” under 8 U.S.C. § 1225(b)(2)(A)
13 and therefore subject to mandatory detention.
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15 11. Petitioner's detention on this basis violates the plain language of
16 the Immigration and Nationality Act. Section 1225(b)(2)(A) does not apply to
17 individuals like Petitioner who previously entered and are now residing in
18 the United States. Instead, such individuals are subject to a different statute,
19 8 U.S.C. § 1226(a), that allows for release on conditional parole or bond. 8
20 U.S.C. § 1226(a) only authorizes arrest and detention under the
21 authorization of a warrant. That statute expressly applies to people who, like
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1 Petitioner, are charged as inadmissible for having entered the United States
2 without inspection.

3 12. Respondents' new legal interpretation is plainly contrary to the
4 statutory framework and contrary to decades of agency practice applying §
5 1226(a) to people like Petitioner. Respondents failed to meet the procedural
6 requirement of § 1226(a) to serve a warrant prior to arrest and detention of
7
8 Petitioner

9 13. Accordingly, Petitioner seeks a writ of habeas corpus requiring
10 that he be released immediately.

11 14. In the alternative, the Petitioner seeks a writ of habeas corpus
12 requiring release unless Respondents provide a bond hearing under § 1226(a)
13 within fourteen days.

14 JURISDICTION

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16 15. Petitioner is in the physical custody of Respondents. Petitioner is
17 detained at the ERO- Camp East Montana in El Paso, Texas.

18 16. This Court has jurisdiction under 28 U.S.C. § 2241(c)(3) (habeas
19 corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2
20 of the United States Constitution (the Suspension Clause).

21 17. This Court may grant relief pursuant to 28 U.S.C. § 2241, the
22 Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28
23 U.S.C. § 1651.
24

VENUE

18. 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 Western District of Texas, the judicial district in which Petitioner currently is detained.

19. 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 Western District of Texas, El Paso Division.

REQUIREMENTS OF 28 U.S.C. § 2243 TO SHOW CAUSE

20. 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, the Respondents must file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*

21. 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

1 receives prompt action from him within the four corners of the application.”

2 *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

3
4 **PARTIES**

5 22. Petitioner Olger Humberto Calle Quituizaca is a citizen of
6 Ecuador who has resided in the United States for over six years. Petitioner
7 has been in immigration detention since January 9, 2026. After arresting
8 Petitioner in or around Rochester, Minnesota, ICE did not set bond.

9 23. Respondent Angel Garite is the Assistant Field Office Director
10 for the El Paso Field Office. As such, he is the immediate physical custodian
11 of Mr. Calle Quituizaca. His address is 8915 Montana Avenue, El Paso, Texas
12 79925. He is named in his official capacity.

13 24. Respondent Mary De Anda-Ybarra is the Director of the El Paso
14 Field Office of ICE’s Enforcement and Removal Operations division. As such,
15 she is Mr. Calle Quituizaca’s immediate custodian and is responsible for his
16 detention and removal. Her address is ICE El Paso Field Office, 11541
17 Montana Avenue, Suite E, El Paso, Texas 79936. She is named in her official
18 capacity.

19 25. Respondent Todd Lyons is the acting director of U.S.
20 Immigration and Customs Enforcement (ICE). He is responsible for
21 overseeing the federal agency responsible for Petitioner’s detention. His
22 address is U.S. Immigration and Customs Enforcement, Office of the
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1 Principal Legal Advisor, 500 12th St. SW, Mailstop 5900, Washington, D.C.
2 20536. Mr. Lyons has custodial authority over Petitioner and is sued in his
3 official capacity.

4 26. Respondent Kristi Noem is the Secretary of the U.S. Department
5 of Homeland Security. In this capacity, she is responsible for the
6 administration of immigration laws pursuant to 8 U.S.C. § 1103(a) and is
7 legally responsible for pursuing any effort to confine and remove Mr.
8 Nazarian. As such, she is a custodian of Mr. Nazarian. Respondent Noem's
9 address is Office of the General Counsel, MS 0485 Department of Homeland
10 Security, 2707 Martin Luther King, Jr. Ave. SE, Washington, D.C. 20528-
11 0525. Ms. Noem has ultimate custodial authority over Mr. Nazarian and is
12 sued in her official capacity.
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14 27. Respondent Pam Bondi is the Attorney General of the United
15 States and the senior official of the U.S. Department of Justice. Respondent
16 Bondi's address is U.S. Department of Justice, 950 Pennsylvania Avenue,
17 NW, Washington, D.C. 20530-0001. An agency under her authority, the
18 Board of Immigration Appeals, recently declared that immigration judges
19 (IJs) do not have jurisdiction to set bond for immigrants who are not
20 admitted or paroled into the United States. *See Matter of Yajure Hurtado*, 29
21 I. & N. Dec. 216 (BIA 2025). Ms. Bondi has custodial authority over
22 Petitioner and is sued in her official capacity.
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1 28. Respondent Warden is the agent overseeing the ERO El Paso
2 Camp East Montana Detention Facility, where Petitioner is detained. His
3 address is ERO EL PASO CAMP EAST MONTANA, 6920 Digital Road, El
4 Paso, TX 79936. He has immediate physical custody of Petitioner. He is sued
5 in his official capacity.
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7 8 LEGAL FRAMEWORK

9 A. Discretionary Detention

10 29. “It is well established that the Fifth Amendment entitles
11 [noncitizens] to due process of law in deportation proceedings.” *Demore v.*
12 *Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306
13 (1993)). “Freedom from imprisonment—from government custody, detention,
14 or other forms of physical restraint—lies at the heart of the liberty that [the
15 Due Process] Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).
16

17 30. Due Process requires that there be “adequate procedural
18 protections” to ensure that the government’s asserted justification for a
19 noncitizen’s physical confinement “outweighs the ‘individual’s
20 constitutionally protected interest in avoiding physical restraint.’” *Id.* at 690
21 (quoting *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997)). In the immigration
22 context, the Supreme Court only recognizes two purposes for civil detention:
23 preventing flight and mitigating the risks of danger to the community.
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1 *Zadvydas*, 533 U.S. at 690; *Demore*, 538 U.S. at 528. A noncitizen may only
2 be detained based on these two justifications if they are otherwise statutorily
3 eligible for bond. *Zadvydas*, 533 U.S. at 690.

4 31. “The fundamental requirement of due process is the opportunity
5 be heard at a meaningful time and in a meaningful manner.” *Mathews v.*
6 *Eldridge*, 424 U.S. 319, 333 (1976). To determine what process Petitioner is
7 due, this Court should consider (1) the private interest affected by the
8 government action; (2) the risk that current procedures will cause an
9 erroneous deprivation of that private interest, and the extent to which that
10 risk could be reduced by additional safeguards; and (3) the government's
11 interest in maintaining the current procedures, including the governmental
12 function involved and the fiscal and administrative burdens that the
13 substitute procedural requirement would entail. *Id.* at 335.

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

16 33. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in
17 standard removal proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals
18 in § 1226(a) detention are generally entitled to a bond hearing at the outset of
19 their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who
20 have been arrested, charged with, or convicted of certain crimes are subject to
21 mandatory detention, *see* 8 U.S.C. § 1226(c).
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1 34. 8 U.S.C. § 1226(a) provides that “On a warrant issued by the
2 Attorney General, an alien may be arrested and detained pending a decision
3 on whether the alien is to be removed from the United States.”

4 35. 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 referred to under § 1225(b)(2).
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8 36. Last, the INA also provides for detention of noncitizens who have
9 been ordered removed, including individuals in withholding-only proceedings,
10 *see* 8 U.S.C. § 1231(a)–(b).

11 37. This case concerns the detention provisions at §§ 1226(a) and
12 1225(b)(2).

13 38. The detention provisions at § 1226(a) and § 1225(b)(2) were
14 enacted as part of the Illegal Immigration Reform and Immigrant
15 Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104-208, Div. C, §§ 302–03,
16 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section 1226(a) was
17 most recently amended earlier this year by the Laken Riley Act, Pub. L.
18 No.119-1, 139 Stat. 3 (2025).
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20 39. Following the enactment of the IIRIRA, EOIR drafted new
21 regulations explaining that, in general, people who entered the country
22 without inspection were not considered detained under § 1225 and that they
23 were instead detained under § 1226(a). *See* Inspection and Expedited
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1 Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal
2 Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

3 40. Thus, in the decades that followed, most people who entered
4 without inspection and were placed in standard removal proceedings received
5 bond hearings, unless their criminal history rendered them ineligible. That
6 practice was consistent with many more decades of prior practice, in which
7 noncitizens who were not deemed “arriving” were entitled to a custody
8 hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994);
9 *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a)
10 simply “restates” the detention authority previously found at § 1252(a)).
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12 41. On July 8, 2025, ICE, “in coordination with” DOJ, announced a
13 new policy that rejected well-established understanding of the statutory
14 framework and reversed decades of practice.
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16 42. The new policy, entitled “Interim Guidance Regarding Detention
17 Authority for Applicants for Admission,” claims that all persons who entered
18 the United States without inspection shall now be deemed “applicants for
19 admission” under 8 U.S.C. § 1225, and therefore are subject to mandatory
20 detention provision under § 1225(b)(2)(A). The policy applies regardless of
21 when a person is apprehended and affects those who have resided in the
22 United States for months, years, and even decades.
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1 43. On September 5, 2025, the Board of Immigration Appeals (BIA)
2 adopted this same position in the case of *Matter of Yajure Hurtado*, 29 I&N
3 Dec. 216 (BIA 2025). That decision holds that all noncitizens who entered the
4 United States without admission or parole are considered applicants for
5 admission and are ineligible for immigration judge bond hearings.

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7 44. Under the Supreme Court's recent decision in *Loper Bright v.*
8 *Raimondo*, this Court should independently interpret the statute and give
9 the BIA's expansive interpretation of § 1225(b)(2) no weight, as it conflicts
10 with the statute, regulations, and precedent. 603 U.S. 369 (2024).

11 45. ICE and EOIR have adopted this position even though federal
12 courts have rejected this exact conclusion. For example, after IJs in the
13 Tacoma, Washington, immigration court stopped providing bond hearings for
14 persons who entered the United States without inspection and who have
15 since resided here, the U.S. District Court in the Western District of
16 Washington found that such a reading of the INA is likely unlawful and that
17 § 1226(a), not § 1225(b), applies to noncitizens who are not apprehended upon
18 arrival to the United States. *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239
19 (W.D. Wash. 2025); *see also Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025
20 WL 1869299, at *8 (D. Mass. July 7, 2025) (granting habeas petition based on
21 same conclusion).
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1 46. “The idea that a different detention scheme would apply to non-
2 citizens ‘already in the country,’ as compared to those ‘seeking admission into
3 the country,’ is consonant with the core logic of our immigration system.”
4 *Martinez v. Hyde*, CV 25-11613-BEM, 2025 WL 2084238 (D. Mass. July 24,
5 2025) (citing *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018)).
6

7 47. The interpretation endorsed by DOJ and DHS is contrary to the
8 INA. As the *Rodriguez Vazquez* court explained, the plain text of the
9 statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to
10 people like Petitioner.

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

16 49. The text of § 1226 also explicitly applies to people charged as
17 being inadmissible, including those who entered without inspection. *See* 8
18 U.S.C. § 1226(c)(1)(E). Subparagraph (E)’s reference to such people makes
19 clear that, by default, such people are afforded a bond hearing under
20 subsection (a). As the *Rodriguez Vazquez* court explained, “[w]hen Congress
21 creates “specific exceptions” to a statute’s applicability, it “proves” that
22 absent those exceptions, the statute generally applies. *Rodriguez v. Bostock*,
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1 779 F. Supp. 3d 1239, 1257 (W.D. Wash. 2025) (citing *Shady Grove*
2 *Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

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

6 51. By contrast, § 1225(b) applies to people arriving at U.S. ports of
7 entry or who recently entered the United States. The statute's entire
8 framework is premised on inspections at the border of people who are
9 "seeking admission" to the United States. 8 U.S.C.

10 § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this
11 mandatory detention scheme applies "at the Nation's borders and ports of
12 entry, where the Government must determine whether a[] [noncitizen]
13 seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S.
14 281, 287 (2018).

15 52. Accordingly, the mandatory detention provision of § 1225(b)(2)
16 does not apply to people like Petitioner, who have already entered and were
17 residing in the United States at the time they were apprehended.

18 53. Once proceedings have been categorized under 8 U.S.C. § 1226(a),
19 they cannot be arbitrarily recategorized under 8 U.S.C. § 1225(b). *Mayamu K.*
20 *v. Bondi*, Civ. No. 25-3035 (JWB/LIB), 2025 WL 3641819, *3 (D.Minn. Oct.
21 20, 2025).

FACTS

54. Petitioner has resided in the United States for over six years, and lived in Minnesota prior to his detention.

55. On January 9, 2025, the U.S. Department of Homeland Security arrested the Petitioner. No I-200, I-213, or NTA has been served to date.

56. The Petitioner is now detained at the Camp East Montana.

57. Petitioner's criminal history involves no offenses subjecting him to mandatory detention.

58. Petitioner has an active pending I-589 asylum application, as does his wife and their children, as derivatives.

59. Petitioner and his wife have two children who are also applying for asylum.

60. Petitioner is neither a flight risk nor a danger to the community.

61. Currently, Petitioner remains in detention. Without relief from this court, he faces the prospect of months, or even years, in immigration custody, separated from his family and community.

62. Any attempt to pursue a bond hearing before EOIR, while available, is futile for his release. IJ's are currently bound the recent BIA decision in *Yajure Hurtado*, which would subject the Petitioner to detention

1 without discretionary bond, likely in contravention of federal law. Moreover,
2 in the *Rodriguez Vazquez* litigation, where EOIR and the Attorney General
3 were defendants, DOJ affirmed its position that individuals like Petitioner
4 are applicants for admission and subject to detention under § 1225(b)(2)(A).
5 See Mot. to Dismiss, *Rodriguez Vazquez v. Bostock*, No. 3:25-CV-05240-TMC
6 (W.D. Wash. June 6, 2025), Dkt. 49 at 27–31.
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8 9 CLAIMS FOR RELIEF

10 COUNT I

11 Violation of 8 U.S.C. § 1226(a) 12 Unlawful Denial of Release on Bond

13 63. Petitioner incorporates by reference the allegations of fact set
14 forth in the preceding paragraphs.

15 64. Petitioner may be detained, if at all, pursuant to 8 U.S.C. §
16 1226(a).

17 65. Under § 1226(a) and its associated regulations, Petitioner is
18 entitled to a bond hearing. 8 C.F.R. 236.1(d) & 1003.19(a)-(f).
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20 66. Petitioner has not been, and will not be, provided with a bond
21 hearing as required by law.

22 67. Petitioner's continuing detention is therefore unlawful.
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COUNT II

**Violation of the Bond Regulations, 8 C.F.R. §§ 236.1, 1236.1 and
1003.19 Unlawful Denial of Release on Bond**

68. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

69. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service (“INS”) issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of “Apprehension, Custody, and Detention of [Noncitizens],” the agencies explained that “[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination.” 62 Fed. Reg. at 10323. The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.

70. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

COUNT III

**Violation of the INA By Erroneously Categorizing Petitioner's
detention as being pursuant to 8 U.S.C. § 1225(b)(2)**

71. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

72. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who previously entered the country and have been residing in the United States prior to being apprehended again by Respondents. *Lopez-Arevelo v. Ripa*, 801 F.Supp.3d 668, 684 (W.D. Tex. 2025); *Vieira v. De Anda-Ybarra*, --- F.Supp.3d ----, 2025 WL 2937880, *5 (W.D. Tex. Oct. 16, 2025) Such noncitizens are detained under § 1226(a), unless they are subject to § 1226(c) or § 1231.

73. Petitioner has resided in the U.S. for over six years. He is therefore neither an arriving alien nor an alien who is now seeking admission to the United States.

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

COUNT IV

Violation of Due Process

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

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

11 77. The government’s detention of Petitioner is unjustified.
12 Respondents deprived the Petitioner of the opportunity to demonstrate he
13 need not be detained. See *Zadvydas*, 533 U.S. at 690 (finding immigration
14 detention must further the twin goals of (1) ensuring the noncitizen’s
15 appearance during removal proceedings and (2) preventing danger to the
16 community). Petitioner cannot present facts demonstrating that he can be
17 safely released back to his community when the Respondents illegally
18 deprive any IJ of jurisdiction to hear his case.

20 78. Respondents’ continued immigration detention of the Petitioner
21 is disconnected from a “reasonable relationship” to any legitimate
22 nonpunitive purpose. *Zadvydas*, 533 U.S. at 690. Petitioner has a
23 fundamental interest in liberty and being free from official restraint.
24

1 79. The government's detention of Petitioner without a bond
2 redetermination hearing to determine whether he is a flight risk or danger to
3 others violates his right to due process. The court should issue a writ of
4 habeas corpus directing Respondents to release Petitioner to safeguard his
5 Fifth Amendment liberties.
6

7 COUNT V

8 **Respondents' Custody Determination is Contrary to Law**

9 80. Petitioner incorporates by reference the preceding paragraphs.

10 81. The Administrative Procedure Act (APA) provides that courts
11 "shall ... hold unlawful and set aside agency action" that is "arbitrary,
12 capricious, an abuse of discretion, or otherwise not in accordance with
13 law" or is "unsupported by substantial evidence." 5 U.S.C. §§ 706(2)(A),
14 (E).
15

16 82. The APA claim is properly raised in the habeas petition because
17 it concerns a regulation that impacts the fact and duration of
18 confinement. "Challenges to the validity of any confinement or to
19 particulars affecting its duration are the province of habeas corpus[.]"
20 *Muhammad v. Close*, 540 U.S. 749, 750 (2004); *see also Otey v. Hopkins*,
21 5 F.3d 1125, 1130 (8th Cir. 1993).
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1 83. Here, Petitioner's APA challenge concerns the *Yajure Hurtado*
2 and *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025) decisions that affected
3 the duration of Mr. Calle Quituizaca confinement by stripping the IJ of
4 jurisdiction.

5 84. Under *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369
6 (2024), the Supreme Court held that "[c]ourts must exercise their
7 independent judgment in deciding whether an agency has acted within
8 its statutory authority, as the APA requires." *Loper Bright Enters. v.*
9 *Raimondo*, 603 U.S. 369, 410 (2024).

10 85. In *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), the
11 BIA held that all noncitizens who entered the United States without
12 admission or parole are now considered applicants for admission under
13 8 U.S.C. § 1225 and thus are ineligible for immigration judge bond
14 hearings. This precedential decision applies to those in Petitioner's
15 circumstances and was decided after the IJ ordered him to be released
16 on bond. As such, it will be applied to the currently pending appeal
17 with the BIA.

18 86. Because the BIA's precedential decision *Matter of Yajure*
19 *Hurtado*, categorizes Petitioner as detained under § 1225(b), *a statute*
20 *which does not apply to him*, the BIA decision is arbitrary, capricious,
21 and unlawful and should be set aside. Instead, Petitioner should be
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1 categorized as detained under § 1226(a), which allows for release on
2 conditional parole or bond for individuals who entered the United
3 States without inspection.

4 87. For this reason, this Court should enter a declaratory judgment
5 finding that Petitioner is detained under 8 U.S.C. § 1226(a) and order
6 him released on the bond issued by the IJ.
7

8 **COUNT VI**

9 ***Matter of Yajure Hurtado and Matter of Q. Li Violate Procedural Due***
10 ***Process as Applied***

11 88. Petitioner incorporates by reference the preceding paragraphs.

12 89. When the government interferes with a liberty interest, “the
13 procedures attendant upon that deprivation [must be] constitutionally
14 sufficient.” *Ky. Dept. of Corrections v. Thompson*, 490 U.S. at 460. The
15 constitutional sufficiency of procedures is determined by weighing
16 three factors: (1) the private interest that will be affected by the official
17 action, (2) the risk of erroneous deprivation of that interest through the
18 available procedures, and (3) the government’s interest, including the
19 function involved and the fiscal and administrative burdens that
20 additional or substitute procedures would entail. *Mathews*, 424 U.S. at
21 335.
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1 90. Petitioner has a weighty liberty interest as his freedom “from
2 government . . . detention . . . lies at the heart of the liberty that [the
3 Fifth Amendment] protects.” *Zadvydas*, 533 U.S. at 693.
4

5 91. The risk of erroneous deprivation of Petitioner’s liberty is
6 extremely high, given that the government, pursuant to erroneous
7 recent decisions by the BIA, is detaining Petitioner under a statute that
8 does not apply to him and denying him his statutory right to a bond
9 hearing on the erroneous assertion that he is subject to mandatory
10 detention.
11

12 92. Finally, the government’s interest in preserving its unilateral
13 authority to prevent the release of noncitizens who have already shown
14 they are neither a flight risk nor a danger is minimal. Providing
15 additional procedural protections here introduces no additional
16 administrative burdens as Petitioner is statutorily entitled to a bond
17 hearing under 8 U.S.C. § 1226(a).
18

19 93. Because Respondents have custody of Petitioner in violation of
20 his Fifth Amendment rights, the Court should issue a writ of habeas
21 corpus directing Respondents to release Petitioner to safeguard his
22 constitutional liberties. 28 U.S.C. § 2241. Numerous courts throughout
23 the country have found that the use of the mandatory detention
24

1 provision, as affirmed in *Matter of Yajure-Hurtado*, violates an
2 individual's right to meaningful procedural due process. *See, e.g.,*
3 *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *12
4 (W.D. Tex. Sept. 22, 2025); *Lopez Santos v. Noem*, No. 3:25-CV-01193,
5 2025 WL 2642278, at *5 (W.D. La. Sept. 11, 2025); *Kostak v. Trump*,
6 No. CV 3:25-1093, 2025 WL 2472136, at *3 (W.D. La. Aug. 27, 2025);
7 *Hyppolite v. Noem*, 25-CV-4304 (NRM), . --- F.Supp.3d ----, 2025 WL
8 2829511, *12 (E.D.N.Y. Oct. 06, 2025) (“**If his detention is and has**
9 **always been “mandatory” under § 1225(2)(A), [...] it is hard to**
10 **see how the United States government would, or even could,**
11 **have granted him permission to seek employment outside the**
12 **confines of an ICE detention facility.”**) (emphasis added). As such,
13 this Court should likewise find that Petitioner's detention represents a
14 violation of his right to procedural due process and order him released
15 according to the bond conditions set by the IJ.
16
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18 COUNT VII

19 **Violation of 8 U.S.C. § 1226(a) - Unlawful Warrantless Arrest**

20 **Detention Under This Provision**

21
22 94. Petitioner incorporates by reference the preceding paragraphs.
23
24

1 95. 8 U.S.C. § 1226(a) provides that “On a warrant issued by the
2 Attorney General, an alien may be arrested and detained pending a
3 decision on whether the alien is to be removed from the United States.”

4 96. The issuance of a warrant is a necessary pre-requisite to arrest
5 and detention under § 1226(a). *Roseline K. N., Petitioner, v. Pam Bondi,*
6 *et al., Respondents*, No. 26-CV-540 (KMM/SGE), 2026 WL 185069, at
7 *2 (D. Minn. Jan. 25, 2026); *Ahmed M. v. Bondi*, No. 25-CV-4711
8 (ECT/SGE), 2026 WL 25627, at *3 (D. Minn. Jan. 5, 2026) (citing to
9 District courts reaching the same conclusion across the 1st, 9th, and 11th
10 Circuits.)
11

12 97. As such, this Court should find that Petitioner’s detention is only
13 proper under § 1226(a) and is owed immediate release as Respondents
14 have failed to comply with the procedural requirements for arrest and
15 detention under the statute.
16

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19 **PRAYER FOR RELIEF**

20 WHEREFORE, Petitioner prays that this Court grant the following relief:
21

22 a. Assume jurisdiction over this matter;
23
24

- b. Issue a writ of habeas corpus requiring that Respondents immediately release Petitioner;
- c. In the alternative, issue a writ of habeas corpus requiring Respondents provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) within 14 days;
- d. If Respondents disclaim jurisdiction to conduct a bond hearing, Petitioner should be immediately released;
- e. Issue an Order to Show Cause pursuant to 28 U.S.C. § 2243, directing Respondents to show cause why the petition for writ of habeas corpus filed by Petitioner pursuant to 28 U.S.C. § 2241 should not be granted within three days;
- f. Issue a writ of habeas corpus requiring that Respondents immediately return Petitioner's work permit, driver's license, and any other seized documents or property lawfully issued to him, so as not to impair his liberty upon release;
- g. Grant any other and further relief that this Court deems just and proper.

DATED this 27th day of January 2026.

/s/Lauren Wallis
Lauren Wallis
Texas Bar No. 24079918
lauren@immigrationnation.net

1 Law Office of Jason Mills, PLLC
2 1403 Ellis Ave
3 Fort Worth, TX 76164
4 T(817)335-0220

5 /s/ Solomon Daniel Steen

6 Solomon Daniel Steen
7 MN Attorney ID: 0506802
8 Contreras Edin Law, P.A.
9 663 University Avenue W.
10 STE 200
11 Saint Paul, MN 55104
12 P: (651) 771-0019
13 F: (651) 772-4300
14 solomon@contrerasedinlaw.com
15 *Pro Hac Vice Pending*

16 *Attorneys for Petitioner*
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