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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Francisco Jose Cruz Calvachi,

Petitioner,

v.

Todd Blanche, Attorney General of the United States, and

Markwayne Mullin, Secretary of the Department of Homeland Security (DHS) and,

Daren Margolin, Director of Executive Office for Immigration Review (EOIR), and,

Todd Lyons, Acting Director of Immigration and Customs Enforcement (ICE), and,

Jason Ciliberti, ICE Deputy Field Office Director, Pheonix Field Office, and,

John Cantu, U.S. Immigration and Customs, Enforcement Phoenix Field Officer, and

Luis Rosa, Jr., Warden of Florence Correctional Center.

Respondents.

Civil Action No.: _____

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

Petitioner, Francisco Jose Cruz Calvachi, is an 18-year-old autistic, schizophrenic, and bulimic Ecuadorian young person, currently in the custody of Immigration and Customs Enforcement ("ICE"). *See* Exhibits D and E, Dr. Forman's Evaluation of Petitioner and ICE Detainee Locator Information. Petitioner entered the United States in December of 2023 as a minor with his mother and was subsequently released and served a Notice to Appear ("NTA"), charging him as removable under § 212(a)(6)(A)(i). *See* Exhibits A and B, Notice to Appear and Order of Release on Recognizance.

His hearing date was originally scheduled for September of 2028, but Petitioner was detained by Immigration & Customs Enforcement on December 31, 2025. *See* Exhibit C, Record of Deportable/Inadmissible Alien. He is now at Florence Correctional Center, Arizona. *See* Exhibit E. The Department of Homeland Security ("DHS") asserted during Petitioner's bond hearing that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2); however, that provision does not apply to him because he is not an applicant seeking admission.

The Board of Immigration Appeals ("BIA") in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), interpreted § 1225(b)(2) to require mandatory detention of all individuals who entered without inspection and thus are ineligible to be released on bond. That decision represents the agency's most recent view of the detention statute, but it illustrates DHS's unlawful expansion of § 1225(b)(2).

Since his initial entry in 2023, Petitioner has lived in New Jersey. Petitioner is not an "arriving alien" at the threshold seeking admission as intended under § 1225(b)(2). Respondents' new legal interpretation is plainly contradictory to the clear statutory language, its framework, and decades of agency practice applying § 1226(a) to people in Petitioner's exact position.

Petitioner's continued detention violates the plain language of INA § 1225(b)(2)(A) as it does not apply to individuals like Petitioner who previously entered and are residing in the United States. Instead, such individuals are subject to a different statute, § 1226(a), that allows for release on conditional parole or bond. That statute applies to individuals like Petitioner who are charged as inadmissible for having entered the United States without inspection.

Pursuant to this Court's inherent powers in habeas corpus proceedings, Francisco Jose Cruz Calvachi, respectfully requests this Court to issue a writ of habeas corpus and order his immediate release from detention.

PARTIES

Petitioner, Francisco Jose Cruz Calvachi, is an Ecuadorian national. He is currently detained at Florence Correctional Center, 1100 N Bowling Road, Florence, Arizona, 85132.

Respondent, Todd Blanche, is named in his official capacity as the acting Attorney General of the United States. In this capacity, he is responsible for the administration of the immigration laws as exercised by the Executive Office for Immigration Review ("EOIR"), pursuant to section 103(g) of the INA, 8 U.S.C. §

1103(g). He is legally responsible for administering Petitioner's removal proceedings and the standards used in those proceedings. Respondent Blanche's address is U.S. Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, District of Columbia 20530.

Respondent, Markwayne Mullin, is named in his official capacity as the Secretary of the U.S. Department of Homeland Security, the federal agency responsible for enforcing Petitioner's arrest, detention, and removal. DHS's address is U.S. Department of Homeland Security, 2707 Martin Luther King Jr. Ave SE, Washington, DC 20528.

Respondent, Daren Margolin, is named in his official capacity as the Director of Executive Office for Immigration Review (EOIR), the federal agency in charge of enforcing Petitioner's removal and detention. EOIR's address is EOIR, 5107 Leesburg Pike, Falls Church, Virginia, 22041.

Respondent, Todd M. Lyons, is named in his official capacity as the Acting Director, Immigration and Customs Enforcement, U.S. Department of Homeland Security, the federal agency responsible for enforcing Petitioner's arrest, detention, and removal. DHS's address is U.S. Department of Homeland Security, 2707 Martin Luther King Jr. Ave SE, Washington, DC 20528.

Respondent, Jason Ciliberti, is named in his official capacity as Deputy Field Office Director, Phoenix Field Office, Immigration and Customs Enforcement, U.S. Department of Homeland Security, the federal agency responsible for enforcing Petitioner's arrest, detention, and removal. Respondent Ciliberti's address is 2035 N Central Ave, Phoenix, AZ 85004.

Respondent, John Cantu, is named in his official capacity as U.S. Immigration and Customs Enforcement, Phoenix Field Officer, the federal agency responsible for enforcing Petitioner's arrest, detention, and removal. Respondent Ciliberti's address is 2035 N Central Ave, Phoenix, AZ 85004.

Respondent, Luis Rocha, is named in his official capacity as the warden of the Florence Correctional Center, where Petitioner is being held. He is the custodian of the Petitioner and is named in his official capacity. His address is 1100 N. Bowling Road, Florence, AZ 85132.

JURSIDICTION

This action arises under the Constitution of the United States, the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 et. seq., as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRAIRA"), Pub. L. No. 104-208, 110 Stat. 1570, and the Administrative Procedure Act ("APA"), 5 U.S.C. §701 et seq.

This Court has subject matter jurisdiction under 28 U.S.C. § 2241; Art. I § 9, cl. 2 of the United States Constitution ("Suspension Clause"); 28 U.S.C. § 1331, as the Petitioner is presently in custody under color of the authority of the United States and such custody violates the Constitution, laws, or treaties of the United States, and the Fifth Amendment of the United States Constitution.

This Court may grant relief pursuant to 28 U.S.C. § 2241, 5 U.S.C. § 702, and the All Writs Act, 28 U.S.C. § 1651. This Court has additional remedial authority under

28 U.S.C. §§ 2201-02 (the Declaratory Judgment Act) to grant injunctive and declaratory relief.

VENUE

Venue is proper and lies in the United States District Court for the District of Arizona because a substantial part of the events or omissions giving rise to the claim occurred in the district. *See* 28 U.S.C. § 1391(b)(2), and 28 U.S.C. § 2241, *et seq.*

Petitioner is currently being held at the Florence Correctional Center in Florence, Arizona, and is in removal proceedings before the Immigration Court in Florence, Arizona.

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 District of Arizona, which is the judicial district in which Petitioner resides and is currently in immigration custody.

FACTUAL BACKGROUND

Petitioner, Francisco Jose Cruz Calvachi, is an 18-year-old autistic, schizophrenic, and bulimic/anorexic young person who relies on his mother for everything. *See* Exhibit D. He was born in Ecuador. *Id.* He entered the United States without inspection on December 20, 2023, with his mother. *See* Exhibit A. Customs and Border Patrol ("CBP") officers apprehended the Petitioner and his mother for three days. They subsequently served him with an NTA charging him as removable under § 212(a)(6)(A)(i) of the INA. *Id.* Notably, Respondents declined to designate Petitioner as an "arriving alien" on the NTA. *Id.*

After being served with his NTA, Petitioner was released "[i]n accordance with section 236 of the [INA] and the applicable provisions of Title 8 of the Code of Federal Regulations." *See* Exhibit B, Order of Release on Recognizance. Petitioner has resided in New Jersey ever since. Two years later, in or around December 2025, he was re-detained by ICE. *See* Exhibit C.

The Petitioner is diagnosed with autism, schizophrenia, and bulimia/anorexia. *See* Exhibit D, Dr. Howard Forman's Psychiatric Evaluation of Petitioner. On December 30, 2025, Petitioner experienced a mental health emergency. *See* Exhibit D. Petitioner's mother called emergency services, hoping that they would provide him with the requisite medical support. *See* Exhibit I, Petitioner's Mother's letter to Essex County Prosecutor's Office. Police officers responded to the call and arrested the Petitioner, charging him with simple assault even though his mother repeatedly stated she did not want to press charges. *See* Exhibit I. The Newark prosecutor dismissed all charges against the Petitioner. *See* Exhibit F, Certificate of Disposition. Petitioner was transferred to ICE custody as a result of this incident. He was initially detained and held in New Jersey, then transported to the Florence Correctional Center in Florence, Arizona, where he is currently held. *See* Exhibit E.

On March 16, 2026, the Immigration Judge granted Petitioner's request for safeguards pursuant to *Matter of M-A-M-*, after identifying indicia of mental illness requiring procedural protections to ensure a fair hearing. 25 I&N Dec. 474 (BIA 2011).

On April 1, 2026, an Immigration Judge sitting at Phoenix Immigration Court denied Petitioner bond, concluding that the Court lacked jurisdiction pursuant to *Matter of Yajure Hurtado,* 29 I&N Dec. 216 (BIA 2025), and that Petitioner was subject to mandatory detention. *See* Exhibit H, Immigration Judge's Bond Order.

Later that day, Respondents moved to pretermit Petitioner's applications for relief against removal. On April 15, 2026, the Immigration Judge sitting at Florence Immigration Court denied that motion, citing the previously ordered safeguards and Petitioner's mental health conditions. *See* Exhibit J, Immigration Judge's Order Denying Respondents' Motion to Pretermit.

Petitioner has no criminal convictions that would render him subject to mandatory detention under 8 U.S.C. § 1226(c). Nor is he an applicant for admission apprehended at a port of entry. He resided in New Jersey for more than two years and was responsibly pursuing his removal case, with a hearing date set for 2028.

LEGAL FRAMEWORK

The Government's Current Interpretation of Detention Authority and Its Departure from Established Practice

On July 8, 2025, DHS issued guidance, in coordination with the Department of Justice, adopting a new interpretation of its detention authority. DHS announced that all

"applicants for admission," including noncitizens present in the United States without having been admitted, are subject to detention under INA § 235(b), rather than § 236(a).[1]

Shortly thereafter, the Board of Immigration Appeals issued a precedential decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), holding that noncitizens "present in the United States without admission" are categorically "applicants for admission" subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) for the duration of their removal proceedings.

Before the BIA's sudden diversion in *Matter of Yajure Hurtado*, Immigration Judges routinely conducted custody redetermination hearings for individuals detained under § 1226(a), finding them to be held in discretionary detention.

Federal courts have repeatedly rejected this interpretation of the detention statutes, and a nationwide class was certified last year asserting such. *Maldonado Bautista v. Noem*, No. 5:25-cv-01873-SSS-BFM, 2025 WL 3678485, at *1 (C.D. Cal. Dec. 18, 2025). On March 6, 2026, the U.S. Court of Appeals for the Ninth Circuit issued a temporary stay in *Maldonado Bautista. See Bautista v. United States Dep't of Homeland Sec.*, No. 26-1044, 2026 LX 109614 (9th Cir. Mar. 6, 2026). Since the issuance of the stay, Immigration Judges have reverted to applying *Yajure Hurtado,* incorrectly finding people similarly situated to the Petitioner subject to mandatory detention.

DHS's reliance on § 1225(b)(2) to justify Petitioner's detention is contrary to the statute's plain text, longstanding administrative practice, and decades of settled

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[1] *See ICE Memo: Interim Guidance Regarding Detentions Authority for Applications for Admission,* AILA (July 8, 2025) https://www.aila.org/library/ice-memo-interim-guidance-

interpretation. As Petitioner is improperly categorized under § 1225(b)(2), he continues to be unlawfully detained in violation of the INA, the APA, and the United States Constitution.

Immediate Release Is the Only Adequate Remedy for Petitioner's Unlawful Detention

Respondents' power to detain is not unlimited and remains subject to judicial review. *See Calderon v. Sessions*, 330 F. Supp. 3d 944, 950 (S.D.N.Y. 2018).

Habeas corpus is, at its core, an equitable remedy that affords courts broad discretion to fashion appropriate relief. *Schlup v. Delo*, 513 U.S. 298, 319 (1995); *Carafas v. La Vallee*, 391 U.S. 234 (1968). The writ has long served as a flexible means of safeguarding individual liberty against unlawful executive detention and "to ensure that miscarriages of justice … are surfaced and corrected." *Harris v. Nelson*, 394 U.S. 286, 291 (1969); *see also Jones v. Cunningham*, 371 U.S. 236, 243 (1963); *Rasul v. Bush*, 542 U.S. 466, 474 (2004).

These protections extend fully to noncitizens. *See Martinez v. McAleenan*, 385 F.Supp.3d 349, 355 ("Due to its talismanic significance in protecting individual liberty from unlawful detention, habeas corpus is fundamentally governed by equity. The Supreme Court has granted the writ when justice has so required.") (citing *Munaf v. Grren*, 128 S.Ct. 2207 (2008) and *Carafas v. LaVallee*, 392 U.S. 234 (1968)). The Supreme Court has noted the writ's "scope and flexibility – its capacity to reach all

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regarding-detention-authority-for-applications-for-admission.

manner of illegal detention – its ability to cut through barriers of form and procedural mazes." *Harris*, 394 U.S. at 291.

Here, a bond hearing would not constitute meaningful relief. Where the available process cannot cure the underlying constitutional violation, it is insufficient as a remedy. Under the circumstances, including recent developments in agency practice that further limit the availability of meaningful relief, Petitioner lacks a realistic opportunity to obtain a constitutionally adequate bond determination under 8 U.S.C. § 1226(a). Requiring Petitioner to pursue such a process would only prolong his unlawful detention. Immediate release is thus warranted.

Recent developments reinforce this conclusion. Reports indicate that the Executive Office for Immigration Review has terminated a significant number of Immigration Judges in recent months, while the Department of Justice has instructed judges to curtail the granting of bond in certain categories of cases.[2] These developments suggest that the

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[2] *See* Nicholas Nehamas. et al., *How Trump Purged Immigration Judges to Speed Up Deportations*, N.Y. TIMES (Apr. 13, 2026) https://www.nytimes.com/2026/04/09/us/politics/trump-miller-immigration-judges-purge.html?unlocked_article_code=1.ZlA.JJNG.txwMTdEzjRn7&smid=url-share; *see also* Anusha Mathur and Ximena Bustillo, *U.S. Has a Quarter Fewer Immigration Judges Than It Did a Year Ago. Here's Why*, NPR (Feb. 23, 2026), https://www.npr.org/2026/02/23/g-s1-110911/trump-immigration-judges-dismissals-numbers (quoting one former IJ as saying: "You are telling every other judge that is left that they better not be following the law or their conscience; that they need to apply the law as you are interpreting it."); E. Tammy Kim, *Inside Donald Trump's Attack on Immigration Courts*, NEW YORKER (Oct. 23, 2025), https://www.newyorker.com/inside-donald-trumps-attack-on-immigration-court (quoting a former official: "What this Administration wants is a rubber stamp."); Eric Katz, 'Climate Of Fear': *Immigration Judges Say Functioning of Their Court System is in Jeopardy Due to Trump's Firings*, GOV'T EXEC. (Nov. 14, 2025), https://www.govexec.com/management/2025/11/climate-fear-immigration-judges-

current framework prioritizes enforcement objectives in ways that may undermine the availability of meaningful process. Courts are not required to ignore such realities. As one court long ago observed, judges need not "shut [their] eyes to matters of public notoriety and general cognizance. When we take our seats on the bench, we are not struck with blindness, and forbidden to know as judges what we see" as ordinary members of society. *Ho Ah Kow v. Nunan*, 12 F. Cas. 252, 255 (C.C.D. Cal. 1879). Under these circumstances, it is difficult to conclude that Petitioner would receive constitutionally adequate safeguards through a bond hearing.

Release is the only appropriate remedy for the constitutional violations in this case, including the lack of pre-deprivation notice or individualized review before Petitioner's arrest, which cannot be remedied by a post-deprivation hearing.

District courts across the country have ordered the immediate release of individuals with ongoing immigration proceedings who were re-detained in violation of their constitutional rights. *See, e.g.*, *Valdez v. Joyce*, 2025 WL 1707737 (S.D.N.Y. June 18, 2025) (ordering immediate release due to lack of pre-deprivation hearing); *Mata Velasquez v. Kurzdorfer*, -- F. Supp. 3d --, 2025 WL 1953796 (W.D.N.Y. July 16, 2025) (similar); *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1034 (N.D. Cal. 2025); (similar); *Maklad v. Murray*, 2025 WL 2299376, at *10 (E.D. Cal. Aug. 8, 2025) (similar); *Garcia v. Andrews*, 2025 WL 2420068, at *13 (E.D. Cal. Aug. 21, 2025) (similar); *Hernandez v. Wofford*, 2025 WL 2420390 (E.D. Cal. Aug. 21, 2025).

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EXHAUSTION OF REMEDIES

Exhaustion of remedies is not required for this habeas petition because Petitioner challenges the government's classification of his detention as mandatory under 8 U.S.C. § 1225(b)(2).

Even if exhaustion were required, Petitioner has already sought custody redetermination before an Immigration Judge. On April 1, 2026, his request for bond was denied on the ground that he is subject to mandatory detention under 8 U.S.C. § 1225(b)(2) and that the court lacked jurisdiction to conduct a custody determination. Any appeal would be futile. Under *Matter of Yajure Hurtado*, the BIA held that noncitizens in Petitioner's position are ineligible for bond hearings before an Immigration Judge, leaving no meaningful avenue for custody review. 29 I&N Dec. 216. Having raised the issue and been denied relief, Petitioner has satisfied any exhaustion requirement. Only this Court can determine whether the government's interpretation of Petitioner's detention is lawful and constitutional.

CLAIMS FOR RELIEF
COUNT ONE

VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT AND IMPLEMENTING REGULATIONS

Petitioner re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

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. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

Courts have found that the government's "own documents [have] reflect[ed] [that] Petitioner's detention [was] governed by § 1226 and not § 1225(b)(2)(A) because Petitioner's Notice to Appear explicitly declined to designate her as an 'arriving alien,' which is the active language used to define the scope of section 1225(b)(2)(A) in its implementing regulation. 8 C.F.R. § 235.3(c)(1)." *Rodriguez v. Bondi*, No. CV-25-03917-PHX-JJT (DMF), 2025 WL 4058331, at *2 (D. Ariz. Nov. 6, 2025); *see also Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1115– 16 (9th Cir. 2007) (holding that a non-citizen released on an "Order of Release on Recognizance" necessarily must have been detained and released under § 1226, including because he was not an "arriving alien" under the regulations governing § 1225). In *Rodriguez v. Bondi*, the court granted habeas relief because the government failed "to explain how it is possible, much less appropriate, to recharacterize the basis for [Petitioner's] detention *after* issuing her Notice to Appear." *Rodriguez v. Bondi*, 2025 WL 4058331, at *2 (emphasis added).

Petitioner was released from custody in accordance with INA § 236, 8 U.S.C. §1226. *See* Exhibit B. Upon release, Respondents declined to designate Petitioner as an "arriving alien" on Petitioner's NTA. *See* Exhibit A.

Respondents' reliance on INA § 235(b)(2)(A), as reinforced by the BIA's recent decision in *Matter of Yajure Hurtado*, unlawfully deprives Petitioner of his statutory right to a bond hearing under § 236(a). Even the Board of Immigration Appeals noted that for

years, Immigration Judges conducted such hearings for individuals who entered without inspection before abruptly reversing course. *Id.* That reversal is inconsistent with the INA, arbitrary and capricious under the APA, and unconstitutional under the Due Process Clause of the Fifth Amendment. This Court is not bound by *Yajure Hurtado* and should decline to follow it.

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

COUNT TWO

VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT

Petitioner re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

Under the APA, a court "shall . . . hold unlawful . . . agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law;" "contrary to constitutional right;" "in excess of statutory jurisdiction, authority, or limitations;" or "without observance of procedure required by law." 5 U.S.C. §§ 706(2)(A)–(D).

Respondents' application of § 1225(b)(2) to Petitioner is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" and "in excess of statutory jurisdiction, authority, or limitations." 5 U.S.C. §§ 706(2)(A), (C).

For decades, DHS and EOIR interpreted the INA to mean that individuals like Petitioner, those apprehended in the interior long after entry, are detained under § 1226(a). The abrupt reversal of this settled interpretation, without explanation or notice-

and-comment, violates the APA. Absent this Court's intervention, Petitioner has no adequate remedy to challenge the unlawful classification of his custody.

COUNT THREE

VIOLATION OF THE FIFTH AMENDMENT RIGHT TO SUBSTANTIVE DUE PROCESS

Petitioner re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein. The Due Process Clause provides that no person shall "be deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V. Its protections extend to "every person within the nation's borders," regardless of immigration status. *Lopez-Valenzuela v. Arpaio*, 770 F.3d 772, 781 (9th Cir. 2014); *id.* ("Even one whose presence in this country is unlawful, involuntary, or transitory is entitled to that constitutional protection.") (quoting *Mathews v. Diaz*, 426 U.S. 67, 77 (1976)). The government violates an individual's right to due process when it (1) "affirmatively place[s] [the] individual in danger," and (2) by "acting with 'deliberate indifference to [a] known or obvious danger.'" *Kennedy v. City of Ridgefield*, 439 F.3d 1055, 1062 (9th Cir. 2006) (quoting *Munger v. City of Glasgow*, 227 F.3d 1082, 1086 (9th Cir. 2000) and *L.W. v. Grubbs*, 92 F.3d 894, 900 (9th Cir. 1996)). When the government's actions leave an individual "in a situation that [is] more dangerous than the one in which [it] found him," the government has affirmatively placed that individual in danger. *Hernandez v. City of San Jose*, 897 F.3d 1125, 1133 (9th Cir. 2018) (quoting *Munger*, F.3d at 1086).

The critical inquiry is thus whether the government's actions "create[d] or expose[d] an individual to a danger which he or she would not have otherwise faced." *Kennedy*, 439 F.3d at 1061; *Cf. J.P. v. Sessions*, No. Civ. 18-06081 JAK (SKx), 2019 WL 6723686, at *36 (C.D. Cal. Nov. 5, 2019) (federal government "'acted with deliberate indifference to a known or obvious danger' by implementing the [family separation] policy with awareness of the potential harm it would cause and intending to use that as a basis to deter future attempts by those similarly situated to enter the United States" (alterations omitted) (quoting *Hernandez*, 897 F.3d at 1137, and *Kennedy*, 439 F.3d at 1062)). Even if Petitioner was required to show deliberate indifference as civil detainees—and he is not, *see Jones v. Blanas*, 393 F.3d 918, 933 (9th Cir. 2004)—he could easily do so. The government acts with deliberate indifference to a known or obvious danger when it "recognize[s] an unreasonable risk and actually intend[s] to expose [the plaintiff] to such risks without regard to the consequences to [the plaintiff]." *Hernandez*, 897 F.3d at 11 (alterations omitted) (quoting *Patel v. Kent Sch. Dist.*, 648 F.3d 965, 974 (9th Cir. 2011)). An unreasonable risk includes future harm caused by conditions of confinement. *See Helling v. McKinney*, 509 U.S. 25, 33 (1993).

Here, Respondents have placed Petitioner in greater danger by misclassifying him under § 1225(b)(2) and denying him the bond procedures guaranteed under § 1226(a). By subjecting him to mandatory detention, the government has exposed a mentally ill young person to prolonged confinement in punitive conditions with no lawful basis for denying him access to bond. Petitioner is diagnosed with autism, schizophrenia, and bulimia/anorexia. Respondents acted with deliberate indifference to the obvious risks

of harm inherent in prolonged and unnecessary detention of individuals with prior existing mental health conditions.

The Due Process Clause requires that civil detention bear a reasonable relation to its non-punitive purpose and not impose excessive or arbitrary hardship. Here, Petitioner's continued detention—based on an erroneous statutory classification—serves no legitimate governmental interest and instead subjects him to harm that exceeds that inherent in lawful civil confinement. The cumulative effect of these conditions has significantly exacerbated Petitioner's physical and psychological vulnerabilities.

As the American Bar Association has recognized, conditions of confinement must reflect "respect for the inherent dignity of every individual."[3] Petitioner's dignitary interests—including his autonomy, ability to direct his own care, and access to supportive conditions—have been severely compromised during his detention. The duration of his confinement has far exceeded what is permissible in a civil detention framework.

Petitioner has suffered, and will continue to suffer, serious physical and emotional harm as a direct result of Respondents' actions. Under these circumstances, his continued detention violates the fundamental principles of due process and human dignity.

COUNT FOUR

VIOLATION OF THE FIFTH AMENDMENT RIGHT TO PROCEDURAL DUE PROCESS

Petitioner re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

Petitioner's detention by Defendants violates his procedural due process rights under the Due Process Clause of the Fifth Amendment of the United States Constitution. The fundamental requirement of due process is the opportunity to be heard "at a meaningful time and in a meaningful manner." *Mathews v. Eldridge,* 424 U.S. 319, 333 (1976) (internal citations omitted). Procedural due process "imposes constraints on government decisions which deprive individuals of 'liberty' or 'property' interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment." *Id.* at 332.

Due process protects a noncitizen's liberty interest in freedom from arbitrary civil confinement. Petitioner has a protected due process interest in seeking judicial review of his continued detention and in obtaining a custody determination in accordance with the INA. By treating Petitioner as subject to mandatory detention under § 1225(b)(2) rather than discretionary custody under § 1226(a), Respondents have deprived him of his liberty without adequate process and in excess of their statutory authority.

Courts within this District have held "that individuals who were released from immigration detention on an order of recognizance have a liberty interest in that release." *Singh v. Party*, No. CV-26-00483-PHX-JCH (CDB), 2026 WL 809849, at *3 (D. Ariz. Mar. 24, 2026) (noting the growing number of cases that have recently held this, including courts within the Ninth Circuit); *see Tinoco v. Noem*, No. 1:25-CV-01762-DC-JDP (HC), 2025 WL 3567862, at *2, *5–7 (E.D. Cal. Dec. 14, 2025); *Telenchana v. Hermosillo*, 2:26-cv-00363-GJL, 2026 WL 696806, at *9 (W.D. Wash. Mar. 12, 2026); *Singh v. Andrews*, 803 F. Supp. 3d 1035 (E.D. Cal. 2025).

In *Singh v. Party*, the court emphasized that "[t]he government cannot "switch tracks" and subject Petitioner to mandatory detention under § 1225(b)(2) when the government has previously placed Petitioner in removal proceedings under § 1229a and released him on [conditional] parole." *Singh v. Party*, 2026 WL 809849, at *3. "And although 'reviewing courts are generally not free to impose [additional procedural rights] if the agencies have not chosen to grant them,' . . . 'governmental actions may create a liberty interest entitled to the protections of the Due Process Clause.'" *Id.*

Here, Respondents failed to afford Petitioner due process in violation of his constitutional rights. Petitioner was re-detained without any notice that his prior release on recognizance had been revoked. Additionally, the Petitioner was not afforded a pre-deprivation hearing before a neutral decision-maker. Instead, the Petitioner has been unlawfully detained as a mandatory detainee without the opportunity for any meaningful bond hearing.

Defendants have unlawfully applied provisions of the INA to Petitioner by misclassifying Petitioner under § 1225(b)(2).

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

1. Assume jurisdiction over this matter;

2. Issue an order directing Respondents to show cause why the petition for a writ of habeas corpus filed by Petitioner pursuant to 28 U.S.C. § 2241 should not be granted;

3. Issue a Writ of Habeas Corpus on the ground that Petitioner's continued detention is unlawful and order his immediate release subject to the same conditions of his prior order of release on recognizance;
4. Declare that the process as applied to Petitioner by Respondents violates the Suspension Clause, the Due Process Clause of the Fifth Amendment, the INA, the APA, and federal regulations;
5. Order Respondents to follow applicable rules, regulations, laws, and the United States Constitution;
6. Retain jurisdiction over this matter and allow Petitioner to move to reopen this matter should Respondents seek to later detain Petitioner under 8 U.S.C. § 1226(a); and,
7. Grant such further relief as the Court deems just and proper.

Respectfully Submitted,

/s/ Monika Sud-Devaraj, Esq. Dated: 04/20/2026

MONIKA SUD-DEVARAJ, ESQ.
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602-234-0782

VERIFICATION BY COUNSEL

I, Monika Sud-Devaraj, declare under penalty of perjury in accordance with 28 U.S.C. § 1746 as follows:

1. I am the attorney for plaintiff-petitioner in this matter and am personally familiar with the facts of this case;

2. I have read the allegations contained in the foregoing Complaint, and to the best of my knowledge, those allegations are true based upon my personal knowledge, information , and belief.

3. I have also reviewed the documents attached to this habeas petition and confirm that they are true copies of the originals and that all the facts or allegations ascertained therein are true and correct to the best of my knowledge and experience.

Executed on 04/20/2026

/s/ Monika Sud-Devaraj, Esq.
MONIKA SUD-DEVARAJ, ESQ.

Attorney for Petitioner

LIST OF EXHIBITS
IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

A - Form I-862, Notice to Appear

B - Form I-220A, Order of Release on Recognizance

C - Form I-830E, Notice to EOIR: Alien Address

D - Dr. Howard Forman's Psychiatric Evaluation of Petitioner

E - ICE Locater Search Results

F - Newark Municipal Court, Certification of Disposition

G - Immigration Judge's Bond Order

H - Asylum Application

I - Letter from Sandy Cruz Calvachi to Essex County Prosecutor's Office with Translation

J - Immigration Judge's Order Denying Respondents' Motion to Pretermit.

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Francisco Jose Cruz Calvachi,
Petitioner,

v.

Todd Blanche, Attorney General of the United States, and
Markwayne Mullin, Secretary of the Department of Homeland Security (DHS) and,
Daren Margolin, Director of Executive Office for Immigration Review (EOIR), and,
Todd Lyons, Acting Director of Immigration and Customs Enforcement (ICE), and,
Jason Ciliberti, ICE Deputy Field Office Director, Pheonix Field Office, and,
John Cantu, U.S. Immigration and Customs, Enforcement Phoenix Field Officer, and
Luis Rosa, Jr., Warden of Florence Correctional Center.

Respondents.

Civil Action No.: _____

PROPOSED HABEAS ORDER

Upon consideration of the pleadings in this case and for good cause, it is hereby ordered that a writ of habeas corpus should issue and Petitioner shall be immediately released from detention.

IT IS SO ORDERED.

Dated:

_____
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I, Monika Sud-Devaraj, Esq., do hereby certify that I have electronically served this document to all parties via the Court's CM/ECF system on the United States Attorney's Office for the District of Arizona. My co-counsel or I will furthermore send courtesy copies by USPS Certified Mail to all Respondents and the U.S. Attorney's office.

Respectfully submitted,

/s/ Monika Sud-Devaraj, Esq.
MONIKA SUD-DEVARAJ, ESQ.

Dated: 04/20/2026

Attorney for Petitioner