UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DIEGO ANÍBAL ALIAGA PEÑA)
)
Petitioner-Plaintiff,)
)
v.)
) Case No. '26CV3279 JLS MSB
SIXTO MARRERO, *in his official capacity* as)
WARDEN, Imperial Regional Detention Facility;)
GREGORY J. ARCHEMBEAULT, *in his official*)
capacity as Field Office Director of the San Diego)
Immigration and Customs Enforcement Operations,)
U.S. Immigrations and Customs Enforcement;)
TODD M. LYONS, *in his official capacity* as Acting)
Director, U.S. Immigration and Customs)
Enforcement, U.S. Department of Homeland)
Security; MARKWAYNE MULLIN, i*n his official*)
capacity as Secretary, U.S. Department of)
Homeland Security: TODD BLANCHE, *in his*)
official capacity as Attorney General of the)
United States,)
)
Respondents - Defendants.)
)

INTRODUCTION

1. Petitioner-Plaintiff Diego Anibal Aliaga Pena ("Petitioner") is an asylum-seeker from Peru who entered the U.S. without inspection on or about November 4, 2023. *See* Notice to Appear ("NTA"), *attached hereto* as Exhibit 1.

2. Shortly after his entry, the U.S. Customs and Border Protection ("CBP") officers apprehended him and charged him as removable as an alien present without admission or parole. *Id.*
3. Based on the individualized facts of Petitioner's case, CBP thereafter released Petitioner from its custody.
4. Petitioner resided in the U.S. after his release and complied with all DHS requirements.
5. Petitioner filed an application for asylum, withholding of removal, and protection under the Convention Against Torture ("CAT").
6. Petitioner was found not guilty of the crime of PC 187(a), first degree murder, by a jury on August 26, 2025. *See* CASE No. FWV25000584 VERDICTS and MINUTE ORDERS, *attached hereto* as Exhibit 2.
7. Petitioner was found not guilty of the crime of PC 187(a), second degree murder, by a jury on August 26, 2025. *See* CASE No. FWV25000584 VERDICTS, *see* Exhibit 2.
8. Petitioner was found not guilty of the crime of PC 273.5(a), inflicting injury on cohabitant resulting in a traumatic condition, by a jury on August 21, 2025. *See* CASE No. FWV25000584 VERDICTS and MINUTE ORDERS, *see* Exhibit 2.
9. Petitioner was found guilty of the crime PC 243(e)(1), battery to cohabitant, by a jury on August 21, 2025 and sentenced to a 180 days sentence. *See* CASE No. FWV25000584 VERDICTS and MINUTE ORDERS, *see* Exhibit 2.
10. Petitioner served the 180-day sentence and on February 25, 2026, Petitioner was transferred to ICE custody, and he is currently detained at the Imperial Regional Detention Facility. *See* ICE Detainee Locator, *attached hereto as* Exhibit 3.

11. Petitioner's re-detention without a showing that he poses a flight risk or danger to the community violates his right to procedural due process under the Fifth Amendment, and he seeks an order from this Court granting his immediate release.

12. Alternatively, Petitioner seeks a declaratory judgment from this Court that he be given a bond hearing under 8 U.S.C. § 1226(a).

13. Petitioner also respectfully asks that this Court order Respondents-Defendants ("Respondents") not to transfer him outside of the District for the duration of this proceeding.

CUSTODY

14. Petitioner is currently in the custody of Immigration and Customs Enforcement ("ICE") at the Imperial Regional Detention Facility. He is therefore in "'custody' of [the DHS] within the meaning of the habeas corpus statute." *Jones v. Cunningham*, 371 U.S. 236, 243 (1963).

JURISDICTION

15. This court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause), and the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et. seq.*

16. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et. seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et. seq.*, the All Writs Act, 28 U.S.C. § 1651, and the Immigration and Nationality Act, 8 U.S.C. § 1252(e)(2).

17. Federal district courts have jurisdiction to hear habeas claims by noncitizens challenging both the lawfulness and the constitutionality of their detention. *See Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243

18. The Court must grant the petition for writ of habeas corpus or issue an order to show cause ("OSC") to Respondents "forthwith," unless Petitioner is not entitled to relief. 28 U.S.C. § 2243. If an OSC is issued, the Court must require Respondents to file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

19. Petitioner is "in custody" for the purpose of 28 U.S.C. § 2241 because Petitioner is arrested and detained by Respondents.

VENUE

20. Venue is properly before this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees or officers of the United States acting in their official capacity and because a substantial part of the events or omissions giving rise to the claim occurred in the Southern District of California. Petitioner is under the jurisdiction of ICE's San Diego Field Office in San Diego, California, and he is currently detained in Calexico, California.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

21. Petitioner had a bond hearing before an Immigration Judge ("IJ") on March 26, 2026, and the IJ, on record, determined he lacked jurisdiction to consider Petitioner's request for custody redetermination because Petitioner entered the U.S. without inspection in light of the two recent decisions from the Board of Immigration Appeals ("BIA"): *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) and *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), which concluded that individuals apprehended shortly after entering without inspection, even if not at a port of entry, are "arriving clients" subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A).

PARTIES

22. Petitioner, Diego Anibal Aliaga Pena, is an asylum-seeker from Peru who is currently detained by ICE in Calexico, California.

23. Respondent Sixto Marrero is sued in his official capacity as Warden of the Imperial Regional Detention Facility. In his official capacity, Mr. Marrero is Petitioner's immediate custodian.

24. Respondent Gregory J. Archembeault is sued in his official capacity as Field Office Director, San Diego Field Office, Enforcement and Removal Operations, U.S. Immigration & Customs Enforcement ("ICE"). In his official capacity, Respondent Archembeault is the legal custodian of Petitioner.

25. Respondent Todd Lyons is sued in his official capacity as Acting Director of ICE. As the Acting Director of ICE, Respondent Lyons is a legal custodian of Petitioner.

26. Respondent Markwayne Mullin is sued in his official capacity as Secretary of Homeland Security. As the head of the Department of Homeland Security ("DHS"), the agency tasked with enforcing immigration laws, Secretary Mullin is Petitioner's ultimate legal custodian.

27. Respondent Todd Blanche is sued in his official capacity as the Acting Attorney General of the United States. As Acting Attorney General, he has authority over the Department of Justice and is charged with faithfully administering the immigration laws of the United States.

STATEMENT OF FACTS

28. Petitioner-Plaintiff Diego Anibal Aliaga Pena ("Petitioner") is a citizen of Peru who entered the U.S. without inspection on or about November 4, 2023.

29. Shortly after his entry, CBP officers apprehended him and charged him as removable as an alien present without admission or parole.

30. Based on the individualized facts of Petitioner's case, CBP thereafter released Petitioner from its custody.

31. Petitioner resided in the U.S. after his release, complied with the terms of his release, and has timely filed his asylum application.

32. Petitioner was found not guilty of the crime of PC 187(a), first degree murder, by a jury on August 26, 2025.

33. Petitioner was found not guilty of the crime of PC 187(a), second degree murder, by a jury on August 26, 2025.

34. Petitioner was found not guilty of the crime of PC 273.5(a), inflicting injury on cohabitant resulting in a traumatic condition, by a jury on August 21, 2025.

35. Petitioner was found guilty of the crime PC 243(e)(1), battery to cohabitant, by a jury on August 21, 2025 and sentenced to a 180 days sentence.

36. After serving the 180-day sentence, Petitioner was detained by ICE on February 25, 2026, and he is currently detained at the Imperial Regional Detention Facility. *See* ICE Detainee Locator, *attached hereto as* Exhibit 2.

37. Petitioner was not afforded a pre-deprivation hearing before his re-detention.

LEGAL BACKGROUND

Deprivation of a Protected Interest

38. In a variety of contexts, the Supreme Court has repeatedly found that individuals possess a protected liberty interest against re-incarceration following even a conditional release from imprisonment. See, e.g. *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972) (finding protected liberty interest in revocation of parole); *Young v. Harper*, 520 U.S. 143, 147-49 (1997)

(preparole); *Gagnon v. Scarpelli,* 411 U.S. 778, 782 (1973) (probation). As other courts within the Ninth Circuit have recognized, noncitizens living in the United States under an order that permits their conditional release from custody have a protected liberty interest. *See, e.g.*, *Banol v. Warden*, No. 5:26-CV-00529-CAS-ACCV, 2026 WL 776793, at *5 (S.D. Cal. Mar. 19, 2026); *J.A.E.M. v. Wofford*, NO. 1:25-CV-01380-KESHBK (HC), 2025 WL 3013377, at *4 (E.D. Cal. Oct 27, 2025); *Lucas v. LaRose*, No. 3:25-CV-02973-GPC-JLB, 2025 Wl 3485163, at *5 (S.D. Cal. De. 4, 2025).

Procedural Due Process:

39. Immigration detention is constitutionally permissible only when, after an individualized determination, the government establishes that a noncitizen is either a flight risk or a danger to the community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

40. Due process requires a meaningful opportunity to be heard *before* the deprivation of liberty occurs. *See Mathews v. Eldridge*, 424 U.S. 319 (1976).

41. Under *Mathews*, courts consider (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335.

Statutory Framework of Immigration Detention

42. The INA prescribes two basic forms of detention for noncitizens in pending removal proceedings.

43. First, individuals detained pursuant to 8 U.S.C. § 1226(a) are generally entitled to a bond hearing, unless they have been arrested, charged with, or convicted of certain crimes and are subject to mandatory detention. *See* 8 U.S.C. §§ 1226(a), 1226(c) (listing grounds for mandatory detention); *see also* 8 C.F.R. §§ 1003.19(a) (immigration judges may review custody determinations made by DHS), 1236.1(d) (same).

44. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) as well as other recent arrivals deemed to be "seeking admission" under § 1225(b)(2).

45. For decades, individuals who entered without inspection and were subsequently apprehended by ICE in the interior of the country have been detained pursuant to 8 U.S.C. § 1226(a) and entitled to bond hearings before an IJ, unless barred from doing so due to their criminal history. *See Matter of Yajure Hurtado*, 29 I&N Dec. at 225 n.6 ("[F]or years Immigration Judges have conducted bond hearings for aliens who entered the United States without inspection.").

46. However, in 2025, the Board issued two decisions that mandate detention for certain noncitizens apprehended in the interior of the country: *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), which concluded that anyone who entered the U.S. without inspection was subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A), and *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), which concluded individuals apprehended shortly after entering without inspection, even if not at a port of entry, are "arriving aliens" subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A).

47. This Court and numerous others have rejected this interpretation and instead have found that Section 1226(a), not Section 1225(b)(2)(A), authorizes detention of noncitizens who entered without inspection and were later apprehended in the interior of the country. *See, e.g.*, *Montero-Alvarez v. Alberran*, No. 1:25-CV-1695 AC, 2025 WL 3754116, at *3 (E.D. Cal. Dec. 29, 2025); *Perez v. Lyons*, No. 1:26-CV-00064-DMC (HC), 2026 WL 158818, at *6 (E.D. Cal. Jan. 21, 2026) (finding that noncitizen apprehended at the border, released into the United States, and re-detained after a period of more than two years was eligible for bond under 1226); *Luna Quispe v. Crawford*, No. 1:25-cv-1471, at *11–12 (E.D. Va. Sept. 29, 2025) (explaining "at least thirty federal district courts around the country, including two in this Circuit" have concluded the government's application of § 1225(b)(2)(A) to similarly situated petitioners is unlawful); *Hasan v. Crawford*, No. 1:25-CV-1408 (E.D. Va. Sept. 19, 2025); *Quispe Ardiles v. Noem*, No. 1:25-cv-01382, at *10–14 (E.D. Va. Sept. 30, 2025) (finding petitioner was re-detained under Section 1226(a) after having been previously released on his own recognizance); *Teyim v. Perry*, No. 1:25-cv-01615 (E.D. Va. October 15, 2025); *Duarte Escobar v. Perry*, No. 3:25-cv-758 (E.D. Va. Oct. 27, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-2428, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Mendoza Gutierrez v. Baltasar*, No. 25-cv-2720 (D. Colo. Oct. 17, 2025); *Lopez Arevelo v. Ripa*, No. EP-25-cv-337-KC, at *14 (W.D. Tex. Sept. 21, 2025) ("courts across the country have held that this new, expansive interpretation of mandatory detention under the INA is either incorrect or likely incorrect."); *Belsai D.S. v. Bondi*, No. 25-cv-3682 (KMM/EMB), at *10 (D. Minn. Oct. 1, 2025) (collecting cases).

ARGUMENT

I. Petitioner's re-detention violates his right to procedural due process, and this Court should order his immediate release.

40. The Fifth Amendment's Due Process Clause prohibits the federal government from depriving any person of "life, liberty, or property, without due process of law." U.S. Const. Amend. V.

41. The Supreme Court has emphasized that the Constitution generally requires a hearing *before* the government deprives a person of liberty or property. *Zinermon v. Burch*, 494 U.S. 113, 127 (1990). As the U.S. District Court for the Southern District of New York recently explained in a similar case, "in a free society, a member of law enforcement cannot simply imprison a person without reason and detain her indefinitely. It is not enough that the Government have the power to arrest someone. The Government also must have some justification before it deprives a person protected by the Due Process Clause of her liberty." *Qasemi v. Francis*, No. 25-cv-10029 (LJL), at *27 (S.D.N.Y. Dec. 17, 2025).

42. DHS exercised its discretion to release Petitioner into the U.S. on his own recognizance, and there is no evidence that the reasons supporting his initial release no longer exist.

43. Under the *Mathews v. Eldridge* framework, the balance of interests strongly favors Petitioner's release. 424 U.S. 319 (1974).

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

45. Second, the risk of erroneous deprivation is high under the current procedures. Civil detention is only valid when it is necessary to prevent danger to the community or a flight risk. *Zadvydas*, 533 U.S. at 690. In this case, the government already determined that Petitioner did not pose a danger to the community or a risk of flight, and the circumstances have not changed since then.

46. There is therefore no valid justification for Petitioner's detention, and as such Petitioner's liberty has been deprived erroneously. "At its foundation, due process prohibits detaining an individual without justification." *Mohammed H. v. Trump*, No. 25-cv-1576 (JWB/DTS), 2025 WL 1692739, at *5 (D. Minn. June 17, 2025).

47. The government's interest in detaining Petitioner without due process is minimal. Immigration detention is civil, not punitive, and may only be used to prevent danger to the community or ensure appearance at immigration proceedings. *See Zadvydas*, 533 U.S. at 690. Because the government already determined that Petitioner did not pose a risk of flight or danger, the government has no valid justification for Petitioner's continued detention.

48. Based on this clear due process violation, Petitioner seeks immediate release. 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. *See Alfaro Herrera v. Baltazar*, No. 1:25-cv-04014, 2026 WL 91470, at *13 (D. Colo. Jan. 13, 2026) (given that petitioner had been previously released to the community and holding a bond hearing would prolong his unlawful detention, "[r]espondents' violations of Petitioner's rights are best remedied by ordering Petitioner's immediate release from immigration detention."); *Qasemi v. Francis*, No. 25-cv-10029, 2025

WL 3654098 at *14, (S.D.N.Y. Dec. 17, 2025) (a bond hearing would not be an adequate remedy for the due process violations in petitioner's sudden arrest and detention); *Crespo Tacuri v. Genalo*, No. 25-cv-06896, 2026 WL 35569, at *7 (E.D.N.Y. Jan. 6, 2026) (ordering release, finding that post-deprivation review cannot remedy the due process violation of detaining petitioner with no process or individualized assessment); *Chipantiza-Sisalema v. Francis*, 2025 WL 1927931, at *3 (S.D.N.Y. July 13, 2025) (the "suggestion that government agents may sweep up any person they wish, for [no] reason [whatsoever] . . . so long as the person will, at some unknown point in time, be allowed to ask some other official for his or her release offends the ordered system of liberty that is the pillar of the Fifth Amendment.").

II. Alternatively, this Court should order that Petitioner be given a bond hearing under 8 U.S.C. § 1226(a).

49. Under the Supreme Court's decision in *Loper Bright v. Raimondo*, 603 U.S. 369 (2024), this Court should independently interpret the statute and give the Board's interpretation of Section 1225(b)(2)(A) no weight, as it conflicts with the statute, regulations, and precedent.

50. This Court and others nationwide have overwhelmingly recognized that Section 1226(a) should apply to individuals who ICE apprehends in the interior of the country based on the statute's plain language, legislative history, Supreme Court precedent, and basic canons of construction. *See, e.g.*, *Luna Quispe v. Noem*, No. 1:25-cv-1471, at *11–12 (E.D. Va. Sept. 29, 2025) (explaining "at least thirty federal district courts around the country, including two in this Circuit" have concluded the government's application of § 1225(b)(2)(A) to similarly situated petitioners is unlawful); *Hasan v. Crawford*, No. 1:25-CV-1408 (E.D. Va. Sept. 19,

2025); *Teyim v. Perry*, No. 1:25-cv-01615 (E.D. Va. October 15, 2025); *Duarte Escobar v. Perry*, No. 3:25-cv-758 (E.D. Va. Oct. 27, 2025); *Rodriguez v. Marin*, 909 F.3d 252 (9th Cir. 2018).

51. The plain language of § 1225(b)(2)(A) authorizes mandatory detention only if three conditions are met: the individual must be (1) an "applicant for admission"; (2) "seeking admission"; and (3) "not clearly and beyond a doubt entitled to be admitted." This Court and several others have consistently recognized that "seeking admission" necessarily requires present-tense conduct. *See, e.g.*, *Duarte Escobar*, No. 3:25-cv-758, at *17–18 ("the plain text of the statute demonstrates that an alien "seeking admission" must do more than simply be present in the United States"); *Guerrero Lepe v. Andrews*, No. 1:25-cv-01163, at *8 (E.D. Cal. Sept. 23, 2025) ("the use of a present participle, 'seeking,' necessarily implies some sort of present-tense action.") (internal quotations and citations omitted).

52. The statutory context and structure also make clear that § 1226(a) applies to individuals who have not been admitted and who entered without inspection. There are multiple provisions in § 1226(c) that mandate detention for certain inadmissible noncitizens, including § 1226(c)(1)(A), which applies to noncitizens who have committed or been convicted of certain criminal offenses; § 1226(c)(1)(D), which applies to noncitizens who are inadmissible for having engaged in specified terrorist activity; and § 1226(c)(1)(E), which was enacted last year as part of the Laken Riley Act and applies to noncitizens who entered the U.S. without admission and were thereafter charged with, arrested for, convicted of, or admitted to committing various offenses. Reading § 1225(b)(2) to encompass all noncitizens who entered without inspection would render multiple provisions of § 1226 superfluous. *See*

Hasan, No. 1:25-cv-1408, at *17 ("[M]andatory detention under § 1226(c) would be unnecessary if all persons who have not been admitted into the United States were already subject to § 1225(b)'s mandatory detention provisions."); *Quispe Ardiles*, No. 1:25-cv-01382 at *12 (same); *Garcia Silva v. LaRose,* No. 3:25-CV-02329 (S.D. Ca. Sept. 29, 2025).

53. As this Court has previously recognized, applying § 1225(b)(2)(A) to Petitioner conflicts with the Supreme Court's interpretation of § 1225 and § 1226 in *Jennings v. Rodriguez* 583 U.S. 281 (2018). *See Quispe-Ardiles*, No. 1:25-cv-01382 at *13 (citing *Jennings*, 583 U.S. at 289). The Supreme Court explained in *Jennings*, "U.S. immigration law authorizes the Government to detain certain aliens seeking admission *into* the country under §§ 1225(b)(1) and (b)(2). It also authorizes the Government to detain certain aliens *already in the country* pending the outcome of removal proceedings under § 1226(a)." 583 U.S. at 289 (emphasis added).

54. The legislative history also supports the understanding that § 1225 would only apply to individuals arriving in the U.S. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") of 1996, Pub. L. No. 104-208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Following IIRIRA, the Executive Office for Immigration Review ("EOIR") issued regulations clarifying that individuals who entered the country without inspection were not considered detained under § 1225, but rather under § 1226(a). *See Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures*, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) ("Despite being applicants for admission, aliens who are present without having been

admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination").

55. The title of § 1225 – "Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing" – further indicates that Congress intended § 1225 to apply only to noncitizens apprehended upon arrival. *See Dubin v. United States*, 599 U.S. 110, 120–21 (2023) ("This Court has long considered that the title of a statute and the heading of a section are tools available for the resolution of a doubt about the meaning of a statute.") (internal quotations omitted).

56. Given the plain language of the statute, the legislative history, Supreme Court precedent, and ICE's past treatment of Petitioner as detained pursuant to Section 1226(a), this Court should find that Petitioner can only lawfully be detained pursuant to Section 1226(a) and order that he be afforded a bond hearing.

COUNT I
Violation of Fifth Amendment Right to Due Process

57. Petitioner restates and realleges all paragraphs as if fully set forth here.

58. Petitioner's re-detention without an individualized determination violates his right to procedural due process under the Fifth Amendment of the U.S. Constitution.

59. Considering the *Mathews* factors, Petitioner respectfully requests that this Court order his immediate release from custody or that he be given a bond hearing pursuant to the due process clause.

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

60. Petitioner restates and realleges all paragraphs as if fully set forth here.

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

62. Under § 1226(a) and its associated regulations, Petitioner is entitled to a bond hearing. See 8 C.F.R. 236.1(d) & 1003.19(a)-(f).

63. Petitioner has not been, and will not be, provided with a bond hearing as required by law.

64. Petitioner's continuing detention is therefore unlawful.

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

65. Petitioner restates and realleges all paragraphs as if fully set forth here.

66. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service 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.

67. 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.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court will:

(1) Assume jurisdiction over this matter;

(2) Order that Petitioner not be transferred outside of this District;

(3) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;

(4) Declare that Petitioner's detention is unlawful;

(5) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner from custody or provide him with a bond hearing pursuant to 8 U.S.C. § 1226(a) or the Due Process Clause within seven days;

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

(7) Grant any further relief this Court deems just and proper.

Date: May 27, 2026

Respectfully Submitted,

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VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF PURSUANT TO 28.U.S.C. § 2242

I am submitting this verification on behalf of Petitioner because I am the attorney for Petitioner. I hereby verify that the statements made in the attached Petition for Write of Habeas Corpus are true and correct to the best of my knowledge.

May 27, 2026

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