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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Eduardo Pinto Velarde

Petitioner,

v.

Jeremy CASEY, in his official capacity as Warden of Imperial Regional Detention Facility; Gregory J. ARCHAMBEAULT, in his official capacity as San Diego Field Office Director, ICE Enforcement Removal Operations; Todd LYONS, in his official capacity as Acting Director of ICE; and Markwayne MULLIN, in his official capacity as Secretary of Homeland Security,Todd BLANCHE, Acting U.S. Attorney General; IMMIGRATION AND CUSTOMS ENFORCEMENT; DEPARTMENT OF HOMELAND SECURITY,

Respondents.

'26CV3309 JES DEB

PETITION FOR WRIT OF HABEAS CORPUS

[redacted]

I. INTRODUCTION

1. Petitioner Eduardo Pinto Velarde ("Petitioner") is a 53-year-old Bolivian national who last entered the United States on or about December 2024.
2. The Petitioner entered the United States without inspection.
3. Petitioner is currently pending removal proceedings, on appeal, and was detained at Imperial Regional Detention Facility as of December 20, 2024.

II. VENUE AND JURISDICTION

4. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. §

1331 (federal question), and Article I, § 9, cl. 2 of the Constitution (Suspension Clause), as Petitioner is presently in custody under the authority of the United States and challenging his detention as in violation of the Constitution, laws, or treaties of the United States.

5. The federal district courts have jurisdiction under Section 2241 to hear habeas claims by individuals challenging the lawfulness of their detention by ICE. *See Jennings v. Rodriguez*, 583 U.S. 281, 290-92 (2018).

6. Venue is proper because Petitioner is detained in the Imperial Regional Detention Facility, within the San Diego Division, and Respondent Casey is his immediate custodian. *See* 28 U.S.C. §§ 2241(d), 1391(e).

III. PARTIES

7. Petitioner, a 53-year-old Bolivian national. He is currently detained by Respondents at the Imperial Detention Facility in Imperial, CA, pending removal proceedings that are on appeal.

8. Respondent Jeremy Casey is the Warden of Imperial Regional Detention Facility. Respondent Casey is responsible for the operation of the Detention Center where Petitioner is detained. As such, Respondent Casey has immediate physical custody of the Petitioner. He is being sued in his official capacity.

9. Respondent Gregory J. Archambeault is the San Diego Field Office Director ("FOD") for ICE Enforcement and Removal Operations. Respondent Archambeault is responsible for the oversight of ICE operations at the Imperial Regional Detention Facility. Respondent Archambeault is being sued in his official capacity.

10. Respondent Todd Lyons is the Acting Director of ICE. Respondent Lyons is responsible for the administration of ICE and the implementation and enforcement of the immigration laws, including immigrant detention. As such, Respondent Lyons is a legal custodian of Petitioner is being sued in his official capacity.

11. Respondent Markwayne Mullin is the Secretary of the Department of Homeland Security ("DHS"). As Secretary of DHS, Secretary Mullin is responsible for the general administration and enforcement of the immigration laws of the United States. Respondent Secretary Mullin is being sued in his official capacity.

12. Respondent Todd Blanche is the Acting Attorney General of the United States, and as such has authority over the Department of Justice and is charged with faithfully administering the immigration laws of the United States.

IV. EXHAUSTION OF REMEDIES

13. No statutory exhaustion requirement applies. *See* 8 § U.S.C. 2241; *Laing v. Ashcroft*, 370 F.3d 994, 998 (9th Cir. 2004). Therefore, exhaustion is not jurisdictionally required.

14. Moreover, additional agency steps would be futile. Since Immigration Judges are adhering to the BIA's precedent decision *Matter of Yajure* Hurtado, 28 I&N Dec. 216 (BIA 2025). In its decision, the BIA adopted DHS' reading of 8 U.S.C. § 1225(b)(2), finding individuals similarly situated to Ms. Arias are ineligible for release on bond.

V. STATEMENT OF FACTS

15. Petitioner is a Bolivian national born December 2024. He was placed in proceedings after showing prima facie eligibility for asylum, his case is currently pending appeal.

16. Respondents detained Petitioner at Imperial Regional Detention Facility and initiated removal proceedings on December 2024.

17. The Petitioner remains detained without any recourse. He now seeks habeas relief because of continued detention which violates Due Process and the Fifth Amendment.

VI. LEGAL FRAMEWORK FOR RELIEF SOUGHT

18. 28. Habeas corpus relief extends to a person "in custody under or by color of the authority of the United States" if the person can show he is "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241 (c)(1), (c)(3); see also Antonelli v. Warden, U.S.P. Atlanta, 542 F.3d 1348, 1352 (11th Cir. 2008) (holding a petitioner's claims are proper under 28 U.S.C. section 2241 if they concern the continuation or execution of confinement).

19. 29. "[H]abeas corpus is, at its core, an equitable remedy," Schlup v. Delo, 513 U.S. 298, 319 (1995), that "[t]he court shall ... dispose of [] as law and justice require," 28 U.S.C. § 2243. "[T]he court's role was most extensive in cases of pretrial and noncriminal detention." Boumediene v. Bush, 553 U.S. 723, 779–80 (2008). "[W]hen the judicial power to issue habeas corpus properly is invoked the judicial officer must have adequate authority to make a determination in light of the relevant law and facts and to formulate and issue

appropriate orders for relief, including, if necessary, an order directing the prisoner's release." Id. at 787.

20.30. The Immigration and Nationality Act (INA) prescribes three basic forms of detention for noncitizens in removal proceedings.

21.31. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard

22. non-expedited removal proceedings before an immigration judge (IJ). See 8 U.S.C. §

23. 1229a. Individuals in § 1226(a) detention are entitled to a bond hearing at the outset of their detention, see 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, see 8 U.S.C. § 1226(c).

24.32. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under § 1225(b)(2).

25.33. Last, the Act also provides for detention of noncitizens who have been

26. previously ordered removed, including individuals in withholding-only proceedings, see 8 U.S.C. § 1231(a)–(b).

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

28. 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. Section 1226(a) was most recently amended earlier this

year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

29. Following enactment of the IIRIRA, EOIR drafted new regulations

30. explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained 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).

31. Thus, in the decades that followed, most people who entered without inspection-unless they were subject to some other detention authority-received bond hearings. That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an IJ or other hearing officer. See 8 U.S.C. § 1252(a) (1994); see also H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

32. Respondents' new policy turns this well-established understanding on its heads and violates the statutory scheme.

33. Indeed, this legal theory that noncitizens who entered the United States without admission or parole are ineligible for bond hearings was already rejected by a District Court in the Western District of Washington, finding that such individuals are entitled to bond redetermination hearings before immigration judges, and rejecting the application of § 1225(b)(2) to such cases. Rodriguez v. Bostock, No. 3:25-CV-05240- TMC, 2025 WL 1193850, at *12 (W.D. Wash. Apr. 24, 2025).

34. Despite this finding from a federal court, in July 2025, ICE released a
35. memorandum instructing its attorneys to coordinate with the Department of Justice, the agency housing EOIR, to reject bond redetermination hearings for applicants who arrived in the United States without documents.
36. On September 5, 2025, the BIA decided Matter of Yajure Hurtado, 29 I. & N. Dec. 216 (BIA 2025), incorrectly applying § 1225(b)(2) to individuals like Petitioner.
37. Maldonado Bautista v. Santacruz, No. 5:25-CV-01873-SSS-BFM (Nov. 25, 2025 C.D. Cal.), a case arising in the Central District of California, subsequently certified a class of similarly situated plaintiffs, issued a declaratory judgment and thereafter vacated Matter of Yajure Hurtado.
38. On March 6, 2026, the Ninth Circuit stayed portions of Maldonado Bautista v. Santacruz. However, "The validity of Yajure Hurtado's interpretation of [8 U.S.C.] § 1225(b)(2)(A) is not the subject of this stay motion."
39. 4This interpretation defies the INA. The plain text of the statutory provisions
40. demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner. Section 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." These removal hearings are held under § 1229a, which "decid[e] the inadmissibility or deportability of a[] [noncitizen]."
41. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. See 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to such people makes clear that, by

default, such people are afforded a bond hearing under subsection (a). Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole.

42. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. The statute's entire framework is premised on inspections at the border of people who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A).

43. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to people like Petitioner who are alleged to have entered the United States without admission or parole.

VII. CAUSES OF ACTION

COUNT I
Violation of 8 U.S.C. § 1226(a)

Unlawful Denial of Bond Hearing

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

45. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to noncitizens residing in the United States who are subject to the grounds of

46. inadmissibility because they previously entered the country without being admitted or paroled. Such noncitizens are detained under § 1226(a), unless they are subject to another detention provision, such as § 1225(b)(1), § 1226(c), or §

1231.

47. The application of § 1225(b)(2) to bar Petitioners from receiving a bond redetermination hearing before an immigration judge violates the Immigration and Nationality Act.

COUNT II
Violation of the Administrative Procedure Act
Unlawful Denial of Bond

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

49. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to noncitizens residing in the United States who are subject to the grounds of inadmissibility because they originally entered the United States without inspection or parole. Such noncitizens are detained under § 1226(a), unless they are subject to another detention provision, such as § 1225(b)(1), § 1226(c) or § 1231. The application of § 1225(b)(2) to bar Petitioner from receiving a bond redetermination hearing before an immigration judge is arbitrary, capricious, and not in accordance with law, and as such, it violates the APA. See 5 U.S.C. § 706(2).

COUNT III

Fifth Amendment Due Process Violation

50. The Supreme Court has held that "even one whose presence in this country is unlawful, involuntary, or transitory is entitled to that constitutional protection

[of the Due Process Clauses of the Fifth and Fourteenth Amendments]" Mathews v. Diaz., 426 U.S. 67, 75 n.7 (1976); see also Plyler v. Doe, 457 U.S. 202, 210 (1982) ("Whatever his status under the immigration laws, an alien is surely a 'person' in any ordinary sense of that term."); Wong Wing v. United States, 163 U.S. 228, 238 (1896) ("Persons within the territory of the United States... even aliens... [may not]... be deprived of life, liberty or property without due process of law.").

51. As there is no final order of removal, and there doesn't appear to be one in the reasonably foreseeable future, Petitioner may not be removed from the United States. His removal is not reasonably foreseeable, and his detention no longer serves any legitimate purpose under the INA.

52. In Kydyrali v. Wolf, 499 F. Supp. 3d 768 (S.D. Cal. 2020), a judge in this District granted habeas relief in a substantially similar case, applying a six-factor balancing test first articulated in Banda v. McAleenan, 385 F. Supp. 3d 1099 (W.D. Wash. 2019), which considers: (1) total length of detention to date; (2) likely duration of future detention; (3) conditions of detention; (4) delays in the removal proceedings caused by the detainee; (5) delays in the removal proceedings caused by the government; and (6) the likelihood that the removal proceedings will result in a final order of removal. The court determined that prolonged detention, when considered alongside other due process concerns, can rise to the level of a constitutional violation warranting release. Kydyrali, 499 F. Supp. 3d at 773.

53. Applying the Banda six-factor framework here supports granting Petitioner's

petition.

54. The final factor—finality—strongly supports the grant of this habeas petition and request for a bond hearing. Petitioern is statutorily eligible to apply for asylum, and until that application is finally adjudicated, he cannot be removed from the United States. Thus, the only prospect for removal from the United States would be a speculative, and not factually unsupported prospect of removal to a third country.

55. Almost all delays in this case are attributable to the government. In light of the government's detention policies, increased numbers of detained individuals, decreased number of judges. Petitioner promptly applied for asylum at the border, he has timely attended all of his interviews and court hearings. Although Respondent did request a few continuances, the length of said continuances was based on the availability of the court docket – a docket overwhelmed by ongoing detentions to this day.

56. Petitioners' case was reassigned two different times and on one occasion it was delayed due to insufficient time in light because IJ's under this administration have had to calendar several final hearings at a time in efforts to complete cases more quickly.

57. Petitioner has now been detained by ICE for over fourteen months since his arrival in the United States in December 2024. His case is still pending, currently before the Board of Immigration Appeals. The appeal of his case to the BIA is estimated to take several more months if not over a year. And in the event that the BIA affirms the IJ, then Petitioner will petition for review with

the Ninth Circuit Court of Appeals and if the BIA reverses the IJ, then his case will be remanded back to a new IJ which will take several additional months if not over a year. This period is well beyond the presumptively reasonable six-month period set forth in Zadvydas, 533 U.S. at 701. Courts consistently find detention beyond this threshold triggers due process scrutiny. See Kydyrali, 499 F.Supp. 3d at 774–75.

58. The petitioner poses no risk of flight and no danger to the community. He has no criminal history, has demonstrated compliance with all prior immigration requirements, and has community support in the United States.

59. Petitioner's continued detention without a tenable justification violates his Fifth Amendment right to due process.

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PRAYER FOR RELIEF

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

1) Assume jurisdiction over this matter;

2) Grant Petitioner a writ of habeas corpus directing the Respondents to immediately release him from custody, under reasonable conditions of supervision or in the alternative order an immediate bond hearing;

3) Order Respondents to refrain from transferring Petitioner out of the jurisdiction of this court during the pendency of these proceedings and while the Petitioner remains in Respondents' custody;

4) Order Respondents to file a response within 3 business days of the filing of this petition;

5) Award attorneys' fees to Petitioner; and

6) Grant any other and further relief which this Court deems just and proper.

I affirm, under penalty of perjury, that the foregoing is true and correct.

Respectfully submitted this 29th day of May 2026.

/s/Lilia Rodriguez
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Attorney for Petitioner

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Eduardo Pinto Velarde, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 29 th day of May, 2026.

/s/ Lilia Rodriguez
Attorney Name