Nancy Juarez, Esq.
California Bar Number: 356209

Amervisa Law Offices
5701 W. Slauson Ave., Ste. 100
Culver City CA 90230
310-945-5998
310-945-2575 (FAX)

Attorney for Petitioner

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Iancu, Florian, Petitioner, v. **Warden, Otay Mesa Detention Center;** and **Director of San Diego Field Office, U.S. Immigration and Customs Enforcement**; and In their official capacities. Respondents.	Case No. '26CV4631 BJC DEB **PETITION FOR WRIT OF HABEAS CORPUS**

INTRODUCTION

1. The Petitioner, Iancu, Florian is originally from Romania and is a Romanian citizen, and he is 57 years old.

2. On or about June 25, 2026, the Petition was on his way to work on a construction site in San Diego, California. He was stopped by ICE at an immigration checkpoint and then detained.

3. The Petitioner was then transferred to Otay Mesa Detention Center in California where he is currently held.

4. The Petitioner has filed this Writ of Habeas Corpus Petition ("Petition") and alleges that his detention by the Respondent(s) violates the constitutional and statutory provisions which form the basis of this Habeas Corpus petition.

JURISDICTION

5. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*

6. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331, and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause), and such custody is in violation of the U.S. Constitution, laws, or treaties of the United States.

7. 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.*, and the All Writs Act, 28 U.S.C. § 1651.

VENUE

8. Venue is proper because Petitioner is physically detained at Otay Mesa Detention Center in San Diego, California, which is within the jurisdiction of this District.

9. Venue is also proper in this District because Respondents are officers, employees, or agencies of the United States and a substantial part of the events or omissions giving rise to his claims occurred in this District, and Petitioner resides in this District, and no real property is involved in this action. 28 U.S.C. § 1391(e).

REQUIREMENTS OF 28 U.S.C. § 2243

10. The Court must grant the petition for writ of habeas corpus or issue an order to show

cause ("OSC") to the Respondents "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause 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.* (emphasis added).

11. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England, 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).

PARTIES

12. The Petitioner is currently detained at Otay Mesa Detention Center, and is in custody, and under the direct control, of Respondents and their agents.

13. Respondent Warden of Otay Mesa Detention Center ("Warden"), and he/she has immediate physical custody of Petitioner pursuant to the facility's contract with U.S. Immigration and Customs Enforcement to detain noncitizens and is a legal custodian of Petitioner. Respondent Warden is a legal custodian of Petitioner.

14. Respondent Director of the San Diego Field Office of U.S. Immigration and Customs Enforcement ("Director"). Respondent Director is a legal custodian of Petitioner and has authority to release him.

STATEMENT OF FACTS

15. On or about December 1, 2022, the Petitioner entered without inspection ("EWI") in the USA near San Diego, California.

16. Petitioner's alien number is A[redacted] He is married and has two (2) children aged 35 and 33 years old.

17. On or about June 25, 2026, the Petition was on his way to work on a construction site in San Diego, California. He was stopped by ICE at an immigration checkpoint and then detained.

18. The Petitioner was then transferred to Otay Mesa Detention Center in California where he is currently held.

19. The Petitioner is in immigration proceedings in Otay Mesa, California and has filed his asylum application.

20. The Petitioner's next hearing is before the Otay Mesa court on September 3, 2026.

21. The Petitioner has no criminal record.

22. Lastly, the Petitioner has deep roots in his community, and prior to his detention, the Petitioner was working in construction industry providing for his family. His continued detention deprives his family of his companionship and income.

LEGAL FRAMEWORK

23. The right to file a petition for a writ of Habeas Corpus is intended to, at a minimum, provide "a means of reviewing the legality of Executive detention." *Rasul v. Bush*, 542 U.S. 466, 474 (2004) (quoting *INS v. St. Cyr*, 533 U.S. 289, 301 (2001).

24. In addition, 28 U.S.C. § 2241 is a federal statute that allows individuals in U.S. custody, including noncitizens, to file a habeas corpus petition in federal district court to challenge unlawful detention. Specifically, 8 U.S.C. § 2241(c)(3) grants district court's jurisdiction to hear habeas corpus petitions from noncitizens claiming that they are held "in violation of the Constitution or laws or treaties of the United States.

25. Moreover, 28 U.S.C. § 2241 provides, in relevant part:

    a. Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective

jurisdictions. The order of a circuit judge shall be entered in the records of the district court of the district wherein the restraint complained of is had.

26. The Immigration and Nationality Act ("INA") prescribes three (3) basic forms of detention for the vast majority of aliens in removal proceedings.

27. First, 8 U.S.C. § 1226 authorizes the detention of aliens in standard removal proceedings before an immigration judge ("IJ"). *See* 8 U.S.C. § 1229(a). Individuals in § 1226(a) detention are generally entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. § § 1003.19, 1236.1(d), unless they have been arrested, charged with, or convicted of certain crimes and they are subject to mandatory detention, *see* 8 U.S.C. § 1229(c).

28. Second, the INAS provides for mandatory detention of aliens 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).

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

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

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

32. Following the enactment of the IIRIRA, EOIR drafted new regulations 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).

33. Thus, in the decades that followed, most people who entered without inspection and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible. That practice was consistent with many more decades of prior practice, in which all aliens who were not apprehended "arriving' at the border were entitled to a custody hearing before an immigration judge ("IJ") or other hearing officer. *See* 8 U.S.C. § 1252(a); *see also* H.R. Rep. No. 104-469, pt. 1 at 229 (1996) (noting that § 1226(a) simply "reinstates" the detention authority previously found in § 1252(a)).

34. On or about July 8, 2025, ICE adopted a new policy entitled "Interim Guidance Regarding Authority for Applicant for Admission," claims that all persons who entered the United States without inspection shall now be deemed "applicants for admission" under 8 U.S.C. § 1225 and therefore are subject to mandatory detention provisions under U.S.C. § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended ad affects those who have resided in the United States for month, years, even decades.

35. ICE has adopted this position even though federal courts have rejected this exact conclusion. For example, after IJs in the Tacoma, Washington, stopped providing bond hearings for persons who entered the United States without inspection and who have since resided here, the U.S. District Court in the Western District of Washington found that such a reading of the INA is likely unlawful and that § 1226(a), not § 1225(b), applies to aliens who are not apprehended upon arrival to the Unted States.

Rodriguez Vazquez v. Bostock, 779 F. Supp. 3d 1239 (W.D. Wash. 2025). *See also Lazaro Maldonado Bautista, et. al. v. Ernesto Santacruz Jr. et. al.*, 5:25-cv-01873-SSS-BFM (C.C. Cal. 2026).

36. 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 it clear that, by default, such people are afforded a bond hearing under subsection (a). As the *Rodriguez Vasquez* court explained, "[w]hen Congress creates "specific exception" to a statute's applicability, it "proves" that absent those exceptions, the statute generally applies. *See Rodriguez* at 12.

37. Thus, § 1226 leaves no doubt that it applies to people who face charges of being inadmissible to the Unted States, including those who are present without admission or parole.

38. Accordingly, the mandatory detention provisions of § 1225(b)(2) does not apply to people like the Petitioner, who do not have lawful status, entered the Unted States without inspection, and were not apprehended upon arrival.

39. Lastly, the Petitioner was detained in the US, not at the border, and therefore his detention is governed by §1226(a) not §1225(b), which is consistent with this Court's previous rulings in similar cases. *See Zuniga Cruz v. Noem*, No. 1:26-cv-01818-DC-FB, 2026 WL 890471 (E.D. Ca. Mar. 31, 2026 (granting motion for temporary restraining order and the petitioner's habeas Immigration and Nationality Act Claim where the petitioner lived in the United States for eight years before his detention. As the court found in *Zuniga Cruz*, the proper remedy for Respondent's failure to provide

Petitioner with a statutory compliant bond hearing is Petitioner's immediate release. *Id* at 4.

CLAIMS FOR RELIEF

COUNT ONE

40. The allegations in the above paragraphs are realleged and incorporated herein.

41. The Petitioner asserts that his detention is in violation of the Constitution or laws, such as Fifth Amendment due process violations.

42. For these reasons, Petitioner's detention violates the Due Process Clause of the Fifth Amendment.

COUNT TWO

43. The allegations in the above paragraphs are realleged and incorporated herein.

44. The Petitioner's continued detention violates 8 USC § 1226(a) of the Immigration and Nationality Act and the U.S. Constitution.

COUNT THREE

45. The allegations in the above paragraphs are realleged and incorporated herein.

46. If he prevails, Petitioner respectfully requests attorney's fees and cost under the Equal Access to Justice Act, as amended, 28 U.S.C. § 2412.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

(1) Assume jurisdiction over this matter;

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

(3) Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment and the Petitioner's statutory rights under the INA;

(4) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately or, in the alternative, schedule a bond hearing before an immigration judge;

(5) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and

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

Respectfully submitted,

/s/ Nancy Juarez
Nancy Juarez, Esq.
Counsel for Petitioner

Dated: August 13, 2026

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

I represent Petitioner, Florian Iancu 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 13th day of August 2026.

/s/ Nancy Juarez
Nancy Juarez, Esq.