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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ORLANDO WILFREDO CUYUCH PEREZ,

Petitioner,

v.

WARDEN, Imperial Regional Detention Facility; FIELD OFFICE DIRECTOR, U.S. Immigration and Customs Enforcement, San Diego Field Office; MARKWAYNE MULLIN, Secretary, U.S. Department of Homeland Security; and TODD BLANCHE, Attorney General of the United States,

Respondents.

Case No. '26CV4757 JLS MMP

PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

[EXPEDITED CONSIDERATION REQUESTED]

Petitioner Orlando Wilfredo Cuyuch Perez ("Petitioner"), through undersigned counsel, petitions for a writ of habeas corpus under 28 U.S.C. § 2241. Petitioner is detained without any merits-based custody determination because an Immigration Judge concluded that *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (B.I.A. 2025), deprived the Immigration Court of authority to consider bond. That conclusion misclassifies an interior arrest made after approximately nineteen years of residence as mandatory detention under 8 U.S.C. § 1225(b)(2)(A), rather than discretionary detention under 8 U.S.C. § 1226(a). The Ninth Circuit has now squarely rejected the construction of the statute on which the Immigration Judge relied. *Rodriguez Vazquez v. Bostock*, No. 25-6842, slip op. at 10 (9th Cir. July 30, 2026). Under controlling circuit precedent, Petitioner's custody is governed by § 1226(a), and he is entitled to an individualized custody determination. Petitioner requests an order requiring a prompt § 1226(a) custody hearing on the merits or, if Respondents do not provide one, release under reasonable conditions.

I. INTRODUCTION

1. Petitioner is a thirty-seven-year-old native and citizen of Guatemala who entered the United States in approximately April 2007, at age eighteen, and thereafter lived continuously in the Trenton, New Jersey area for approximately nineteen years.

2. He is the father of two United States-citizen children, has maintained employment and filed taxes, has substantial family and community ties, and, according to the administrative record supplied to counsel, has no criminal convictions or criminal history.

3. ICE arrested Petitioner in New Jersey in June 2026 and transported him across the country to the Imperial Regional Detention Facility in Calexico, California. DHS then commenced removal

proceedings under INA § 240 and charged him as inadmissible under INA §§ 212(a)(6)(A)(i) and 212(a)(7)(A)(i)(I).

4. Petitioner requested a custody redetermination under INA § 236(a), 8 U.S.C. § 1226(a). On July 23, 2026, Immigration Judge Stuart Zander denied the request solely because "[t]he Court is without jurisdiction to determine bond in this case, pursuant to *Matter of Yayure-Hurtado*, 29 I&N Dec. 218 (BIA 2025)." A copy of the custody order is filed as Exhibit A. The order's spelling and starting-page citation are erroneous; the cited precedent is *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (B.I.A. 2025).

5. No adjudicator has determined that Petitioner presents a danger or flight risk. The Immigration Judge did not weigh his family ties, long residence, lack of criminal history, medical needs, ability to obtain relief from removal, or available conditions of release.

6. The statutory question is whether a person arrested in the interior after residing here for many years is detained under § 1226(a), which authorizes individualized release determinations, or instead is deemed perpetually "seeking admission" and mandatorily detained under § 1225(b)(2)(A). The Ninth Circuit answered that question on July 30, 2026, holding that "aliens present without admission who are apprehended in the interior of the United States are subject to the detention regime of § 1226, not § 1225(b)(2)(A)." *Rodriguez Vazquez*, No. 25-6842, slip op. at 10. That holding is binding on this Court and forecloses the sole ground on which bond was denied.

7. Because Petitioner is detained within this District and the denial rests on a categorical legal rule rather than an exercise of bond discretion, this Court has habeas jurisdiction to decide the legality of the detention and order an effective remedy.

II. JURISDICTION AND VENUE

8. This Court has jurisdiction under 28 U.S.C. §§ 1331 and 2241(c)(3), which authorize relief for a person "in custody in violation of the Constitution or laws or treaties of the United States." Habeas review extends to statutory and constitutional challenges to immigration detention. *Demore v. Kim*, 538 U.S. 510, 516–17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687–88 (2001); *I.N.S. v. St. Cyr*, 533 U.S. 289, 300–14 (2001).

9. Petitioner does not seek review of a final order of removal, a discretionary bond amount, or the merits of any removal charge. He challenges the legal authority for detention without a merits-based custody hearing. Sections 1252(a)(5) and 1252(b)(9) therefore do not foreclose jurisdiction. *See Jennings v. Rodriguez*, 583 U.S. 281, 292–95 (2018); *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 18–19 (2020).

10. Nor does 8 U.S.C. § 1226(e) bar review. That provision precludes review of discretionary judgments under § 1226 but does not bar claims that the government lacks statutory or constitutional authority to withhold a custody hearing altogether. *See Demore*, 538 U.S. at 516–17; *Singh v. Holder*, 638 F.3d 1196, 1202 (9th Cir. 2011).

11. Venue is proper under 28 U.S.C. § 1391(e) because Petitioner is confined at the Imperial Regional Detention Facility, 1572 Gateway Road, Calexico, California 92231, within the Southern District of California, and because the immediate custodian is located in this District. *See Rumsfeld v. Padilla*, 542 U.S. 426, 434–35, 442–43 (2004).

III. PARTIES

12. Petitioner Orlando Wilfredo Cuyuch Perez, A-Number [redacted], is a native and citizen of Guatemala presently detained at the Imperial Regional Detention Facility in Calexico, California.

13. Respondent Warden of the Imperial Regional Detention Facility is Petitioner's immediate physical custodian and is sued in that official capacity. *See Padilla*, 542 U.S. at 435.

14. Respondent Field Office Director for ICE Enforcement and Removal Operations in San Diego exercises supervisory authority over Petitioner's immigration detention. The Field Office Director is sued in that official capacity.

15. Respondent Markwayne Mullin is the Secretary of the United States Department of Homeland Security, the department responsible for ICE and Petitioner's detention. He is sued in his official capacity.

16. Respondent Todd Blanche is the Attorney General of the United States and is responsible for the Executive Office for Immigration Review, including the Immigration Court and Board of Immigration Appeals. He is sued in his official capacity.

IV. FACTUAL ALLEGATIONS

A. Petitioner's Family, Community, and Medical Circumstances

17. Petitioner entered the United States in approximately April 2007 and lived continuously in the Trenton, New Jersey area until ICE detained him in June 2026.

18. Petitioner has been in a committed relationship with Viviana Lopez since approximately 2008. They are the parents of two United States-citizen children: [redacted], born in 2018, and [redacted] born in 2024.

19. [redacted] has ongoing medical needs, including asthma, chronic ear problems requiring ear tubes, and nutritional issues. Before detention, Petitioner transported her to medical appointments and communicated with providers because Ms. Lopez does not drive and has limited English proficiency.

20. Petitioner maintained employment, filed federal income-tax returns, possessed a New Jersey driver's license, and participated with his family in Our Lady of the Angels Parish in Trenton.

21. Petitioner has no criminal convictions or criminal history of any kind, according to the materials submitted in the administrative custody proceeding.

22. Petitioner suffers from a hernia for which surgery was scheduled before detention, hypertension, elevated cholesterol, and anxiety requiring medication and medical supervision. Detention postponed the planned surgery.

B. Arrest, Transfer, and Removal Proceedings

23. On or about June 26, 2026, DHS served Petitioner with a Notice to Appear. The NTA alleges that he entered at an unknown place and time without admission or parole and charges inadmissibility under INA §§ 212(a)(6)(A)(i) and 212(a)(7)(A)(i)(I). A copy is filed as Exhibit B.

24. The NTA placed Petitioner in removal proceedings under INA § 240. Petitioner was not arrested at a border or port of entry, was not attempting to enter the country when arrested, and was not undergoing an inspection associated with an application to enter.

25. After arresting Petitioner in New Jersey, ICE transferred him more than 2,000 miles from his family, community, and counsel to the Imperial Regional Detention Facility in Calexico, California.

26. Petitioner may seek cancellation of removal under INA § 240A(b), asylum-related protection if supported by the record, and any other relief for which he is eligible. His longstanding residence, close family relationships, and pending removal proceedings give him powerful incentives to appear.

C. Categorical Denial of a Custody Hearing

27. Petitioner moved for a bond redetermination under § 1226(a) and submitted evidence of his residence, family ties, employment, taxes, medical circumstances, church participation, character, and lack of criminal history.

28. On July 23, 2026, the Immigration Judge denied the request solely on the ground that *Yajure Hurtado* eliminated Immigration Court jurisdiction. DHS waived appeal; Petitioner reserved appeal, with an administrative deadline of August 24, 2026.

29. The Immigration Judge made no finding that Petitioner is dangerous, likely to abscond, or unsuitable for release subject to conditions. Petitioner consequently remains imprisoned without any neutral adjudicator considering whether custody is necessary.

30. Petitioner appears to fall within the nationwide "Bond Eligible Class" certified in *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal.), in which the district court declared that class members are detained under § 1226(a) and entered judgment vacating the DHS policy at issue. The Ninth Circuit stayed that judgment pending appeal insofar as it extends

beyond the Central District of California. Petitioner therefore does not rely on class-wide relief and instead seeks individual habeas relief in the district of his confinement.

V. EXHAUSTION

31. Section 2241 contains no statutory exhaustion requirement applicable to this petition. Although the Ninth Circuit generally requires prudential exhaustion of available administrative remedies, that requirement may be waived when remedies are inadequate, pursuit would be futile, irreparable injury would result, or the administrative proceedings would be void. *Laing v. Ashcroft*, 370 F.3d 994, 999–1001 (9th Cir. 2004); *see also Acevedo-Carranza v. Ashcroft*, 371 F.3d 539, 541–42 (9th Cir. 2004).

32. Petitioner sought a custody redetermination and the Immigration Judge denied it under binding BIA precedent. The Board continues to apply *Yajure Hurtado*, and Immigration Judges remain bound by it. 8 C.F.R. § 1003.1(g)(2). An appeal asking the Board to disregard its own precedential decision would be futile.

33. Exhaustion should also be excused because each additional day of allegedly unauthorized physical confinement is irreparable; the legal question requires no agency factfinding; the question has now been resolved against the agency by controlling circuit precedent, *Rodriguez Vazquez*, No. 25-6842, slip op. at 10; and the Board cannot supply independent judicial interpretation, *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 391–94, 412–13 (2024).

VI. STATUTORY AND LEGAL FRAMEWORK

34. Section 1225 governs inspection of applicants for admission. It defines an "applicant for admission" to include a person "present in the United States who has not been admitted" and a person "who arrives in the United States." 8 U.S.C. § 1225(a)(1). Section 1225(b)(2)(A),

however, mandates detention only when "the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted."

35. Section 1226 addresses arrest and detention "[o]n a warrant issued by the Attorney General, pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). Under that provision, DHS may continue custody or release the person on bond or conditional parole. Id. § 1226(a)(1)–(2). Section 1226(c) identifies the categories within § 1226 that Congress made mandatory.

36. In *Jennings*, the Supreme Court described § 1225 as governing inspection and expedited or ordinary removal of persons seeking admission, while describing § 1226 as governing detention pending a decision whether a person "is to be removed." 583 U.S. at 287–89, 297, 303.

37. In July 2025, DHS issued interim guidance reversing nearly three decades of practice and asserting that every person present without admission is mandatorily detained under § 1225(b)(2)(A). In September 2025, the Board adopted that position in *Yajure Hurtado*, holding that persons present without admission remain "applicants for admission" subject to mandatory detention even when arrested in the interior long after entry. 29 I. & N. Dec. at 216, 228–29. That decision binds Immigration Judges, 8 C.F.R. § 1003.1(g)(2), but it does not bind this Court.

38. On July 30, 2026, the Ninth Circuit rejected the agency's interpretation in a published opinion. *Rodriguez Vazquez v. Bostock*, No. 25-6842 (9th Cir. July 30, 2026). The court held that § 1225(b)(2)(A) "is best construed as applying to aliens entering the United States at the border," while § 1226 "govern[s] inadmissible and deportable aliens present in the interior of the United States." Slip op. at 25–26.

VII. CLAIMS FOR RELIEF

CLAIM ONE

DETENTION WITHOUT A § 1226(A) CUSTODY DETERMINATION VIOLATES THE INA

39. Petitioner incorporates paragraphs 1 through 38.

40. Controlling Ninth Circuit precedent resolves this claim. *Rodriguez Vazquez* holds that persons present without admission who are apprehended in the interior of the United States are detained under § 1226, not § 1225(b)(2)(A), and are therefore entitled to the individualized custody process § 1226(a) provides. Slip op. at 10, 25–26. Petitioner was apprehended in the interior of the United States, in New Jersey, approximately nineteen years after his entry. His custody falls squarely within that holding.

41. The court's reasoning applies directly here. The word "admission" is defined as "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer," 8 U.S.C. § 1101(a)(13)(A), and, combined with "seeking," requires that a person be "engaged in the affirmative process of attempting to gain 'entry' 'into' the country," which occurs at the border or a port of entry. *Rodriguez Vazquez*, slip op. at 29. Reading "applicant for admission" to subsume "seeking admission" renders the latter phrase superfluous. Id. at 29–31.

42. The government's reading is also in conflict with circuit precedent holding that the deeming provision in § 1225(a)(1) creates "a term of art denoting a particular legal status" and does not place a person in a perpetual state of applying, or seeking, admission. *Torres v. Barr*, 976 F.3d 918, 922, 927–29 (9th Cir. 2020) (en banc); *Rodriguez Vazquez*, slip op. at 35–37.

43. Section 1226(a) fits Petitioner's custody precisely: ICE arrested him inside the country and is holding him pending a decision whether he is to be removed in § 240 proceedings. Petitioner does not fall within the criminal or terrorism-related categories Congress made mandatory in § 1226(c). That § 1226(c) withdraws bond for specified *inadmissible* persons confirms that § 1226(a) otherwise reaches inadmissible persons present in the interior. *Rodriguez Vazquez*, slip op. at 49–52; *see Nielsen v. Preap*, 586 U.S. 392, 409 (2019).

44. For roughly thirty years and across administrations of both parties, the government treated persons in Petitioner's position as detained under § 1226(a) and eligible for bond. That unbroken practice is strong evidence that the mandatory detention authority the government now asserts does not exist. *Rodriguez Vazquez*, slip op. at 62–63; *see also Yajure Hurtado*, 29 I. & N. Dec. at 225 n.6.

45. The Board's contrary interpretation receives no deference. *Loper Bright*, 603 U.S. at 412–13.

46. Although the Fifth and Eighth Circuits have adopted the agency's construction, *Buenrostro-Mendez v. Bondi*, 166 F.4th 494, 498–508 (5th Cir. 2026); *Avila v. Bondi*, 170 F.4th 1128, 1134–42 (8th Cir. 2026), those decisions are not binding here and are contrary to the published decision of this Circuit. The Second, Sixth, Tenth, and Eleventh Circuits agree with the Ninth. *Barbosa da Cunha v. Freden*, 175 F.4th 61, 71 (2d Cir. 2026); *Lopez-Campos v. Raycraft*, 175 F.4th 713, 732 (6th Cir. 2026); *Santillan Quiroz v. Mullin*, 2026 WL 1876709, at *5 (10th Cir. June 30, 2026); *Hernandez Alvarez v. Warden*, 175 F.4th 1258, 1262 (11th Cir. 2026).

47. The Court should therefore declare that § 1226(a) governs Petitioner's detention and order Respondents to provide a merits-based custody redetermination under that provision.

CLAIM TWO

DENIAL OF ANY INDIVIDUALIZED CUSTODY DETERMINATION VIOLATES PROCEDURAL DUE PROCESS

48. Petitioner incorporates paragraphs 1 through 47.

49. The Fifth Amendment protects every "person" within the United States, including noncitizens, from deprivation of liberty without due process of law. *Zadvydas*, 533 U.S. at 693; *Mathews v. Diaz*, 426 U.S. 67, 77 (1976). Freedom from physical restraint lies at the core of the protected liberty interest. *Zadvydas*, 533 U.S. at 690.

50. Due process requires procedures adequate to ensure that the government's asserted justification for confinement outweighs the individual's interest in avoiding physical restraint. *See Mathews v. Eldridge*, 424 U.S. 319, 335 (1976); *Hernandez v. Sessions*, 872 F.3d 976, 990–91 (9th Cir. 2017).

51. Petitioner has received no merits-based custody determination at all. His private interest is exceptionally weighty: physical liberty, medical care, family unity, and the ability to assist counsel. The risk of erroneous confinement is substantial because no adjudicator has considered his lack of criminal history, long residence, family and community ties, prospective relief, or alternatives to detention. The government's interests can be protected through a prompt hearing and, if warranted, tailored release conditions.

52. This is not a request for a constitutionally compelled second bond hearing of the type rejected on the particular record in *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206–13 (9th Cir. 2022). Petitioner has never received a first hearing at which the legal and factual bases for continued custody were evaluated.

53. At minimum, due process requires a prompt, neutral, individualized determination of whether detention is necessary. Petitioner requests that the government bear the burden appropriate to the liberty interest—clear and convincing evidence as to danger and at least a preponderance as to flight risk—or, alternatively, that the Court order the procedures governing a lawful § 1226(a) redetermination, including consideration of ability to pay and less restrictive alternatives. *See Hernandez*, 872 F.3d at 991–96; *Singh*, 638 F.3d at 1203–05.

54. Continued categorical detention without any merits-based hearing violates the Due Process Clause.

CLAIM THREE

ALTERNATIVELY, APPLYING YAJURE HURTADO RETROACTIVELY IS IMPERMISSIBLE

55. Petitioner incorporates paragraphs 1 through 54.

56. *Yajure Hurtado* acknowledged that, before the agency changed course, persons present without admission and arrested in the interior generally received § 1226(a) custody hearings. 29 I. & N. Dec. at 225 n.6. Applying the new rule to Petitioner's preexisting residence and legal circumstances imposes the severe new consequence of detention without bond eligibility.

57. Retroactive application of a new agency adjudicative rule is evaluated by considering whether the case is one of first impression, whether the rule abruptly departs from well-established practice, the extent of reliance on the former rule, the burden of retroactivity, and the statutory interest in applying the new rule. *Garfias-Rodriguez v. Holder*, 702 F.3d 504, 518–23 (9th Cir. 2012) (en banc).

58. Those factors weigh against retroactivity here. The agency abruptly reversed established custody practice; Petitioner's settled life and conduct developed during the former regime; mandatory detention imposes an extraordinary liberty burden; and no statutory interest requires retroactive application where § 1226(a) supplies authority to detain dangerous or flight-prone persons after individualized review.

VIII. REQUEST FOR EXPEDITED RELIEF

59. Petitioner requests expedited adjudication and, if necessary, a temporary restraining order or preliminary injunction. He is likely to succeed because controlling Ninth Circuit precedent establishes that § 1226(a), not § 1225(b)(2)(A), governs his detention. *Rodriguez Vazquez*, No. 25-6842, slip op. at 10, 25–26.

60. Each additional day of unauthorized detention is irreparable. Petitioner also faces delayed medical treatment, separation from two young children, and impaired ability to work with counsel. *See Hernandez*, 872 F.3d at 994–95 (recognizing severe harms associated with detention).

61. The balance of equities and public interest favor requiring only the process Congress authorized. A prompt custody hearing preserves the government's ability to detain Petitioner if detention is justified while protecting the public interest in lawful government action. *See Nken v. Holder*, 556 U.S. 418, 435–36 (2009); *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20 (2008).

IX. PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

A. Assume jurisdiction and issue an order directing Respondents to show cause why the writ should not issue;

B. Declare that Petitioner's detention is governed by 8 U.S.C. § 1226(a), not 8 U.S.C. § 1225(b)(2)(A);

C. Declare that Respondents' categorical refusal to provide any merits-based custody determination violates the INA and the Fifth Amendment;

D. Order Respondents, within seven days, to provide a custody redetermination before a neutral adjudicator who may not deny relief on the ground that *Matter of Yajure Hurtado* deprives the adjudicator of jurisdiction;

E. Require the adjudicator to consider danger, flight risk, ability to pay, and less restrictive alternatives, with the government bearing the constitutionally appropriate burden of proof;

F. Order Petitioner released under reasonable conditions if Respondents fail to provide a legally sufficient hearing by the Court's deadline;

G. Prohibit transfer outside this District during the Court's consideration of the petition absent advance notice to Petitioner and the Court;

H. Order Respondents to file a notice of compliance promptly after providing relief;

I. Award reasonable fees and costs to the extent authorized by law, including 28 U.S.C. § 2412, upon a timely application; and

J. Grant such other relief as law and justice require.

Dated: August 20, 2026

Respectfully submitted,

/s/ Jacqueline M. Sale
JACQUELINE M. SALE (SBN 343485)
JAX LAW OFFICES
Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below, I electronically filed the foregoing PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241 with the Clerk of the Court for the United States District Court for the Southern District of California using the CM/ECF system, which will send notification of such filing to all counsel of record registered to receive electronic notice in this case.

Dated: August 20, 2026

Respectfully submitted,

/s/ Jacqueline M. Sale
JACQUELINE M. SALE (SBN 343485)
JAX LAW OFFICES
Attorney for Petitioner